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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204777
Party	Plaintiff Apple Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X		

OPPOSER’S EIGHTH NOTICE OF RELIANCE

Opposer Apple Inc. (“Apple”), pursuant to 37 C.F.R. § 2.120(j)(1), submits of record in connection with this opposition proceeding a copy of certain portions of the August 6, 2013 discovery deposition and accompanying exhibits of Daniel J. Kelman, Esq., who testified on behalf of Applicant Ninja Entertainment Holdings, LLC (“Applicant”) pursuant to Federal Rule of Civil Procedure 30(b)(6). These portions of Mr. Kelman’s discovery deposition and the accompanying exhibits are relevant to the issues of likelihood of confusion and dilution and show, among other things, Applicant’s organization, operations, and business; the priority of Apple’s Marks; the fame of Apple’s marks and of Apple’s goods and services offered under its marks; Applicant’s awareness of Apple’s marks; Applicant’s awareness of third-party use of the term “crapple” to refer to, or in close connection with, Apple or Apple’s goods and services; Applicant’s claims regarding the selection and adoption of the mark at issue in this opposition

proceeding (“Applicant’s Mark”); current and past ownership of Applicant’s Mark; Applicant’s use and intended use of Applicant’s Mark; Applicant’s knowledge of communications, suggestions, or inquiries regarding an association, connection, or affiliation between Applicant, Applicant’s Mark, or Applicant’s goods and services, on the one hand, and Apple, Apple’s marks, or Apple’s goods and services, on the other hand; the relationship between Apple’s goods and services and Applicant’s goods/services offered and intended to be offered under Applicant’s Mark; and Applicant’s lack of a bona fide intent to use Applicant’s Mark in connection with certain goods.

Respectfully submitted,

Dated: November 5, 2013

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/Allison Scott Roach

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

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	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X		

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on Ninja Entertainment Holdings, LLC by depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman
1934 Josephine Street
Pittsburgh, Pennsylvania 15203

This the 5th day of November, 2013.

/s/ Alberto Garcia
Alberto Garcia

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/379,097
For the mark: CRAPPLE
Filed: July 22, 2011
Published: December 20, 2011

APPLE INC.,

Opposer,

vs.

Opposition No.

91204777

NINJA ENTERTAINMENT HOLDINGS, LLC,

Applicant.

VIDEO TELECONFERENCED 30(B)(6)

DEPOSITION OF NINJA ENTERTAINMENT

HOLDINGS, LLC BY DANIEL J. KELMAN, ESQ.

August 6, 2013

9:10 a.m.

Suite 2800
1100 Peachtree Street, NE
Atlanta, Georgia

J. David Brown, RPR, B-1401

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DEPOSITION OF DANIEL J. KELMAN, ESQ.

August 6, 2013

DANIEL J. KELMAN, ESQ., having been first duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MS. JONES:

Q. Hello. My name is Alicia Grahm Jones. I'm an attorney with the law firm of Kilpatrick Townsend. I represent Apple, Inc. in the Opposition Proceeding Apple, Inc. versus Ninja Entertainment Holdings, LLC, Opposition No. 91204777, in connection with the application to register the mark Crapple.

Please state your full name.

A. Daniel Jacob Kelman.

Q. What is your address?

A. 103 Xiàmén Street, Taipei, Taiwan.

Q. Is that your permanent address?

A. What do you mean by permanent address?

Q. How long have you lived at that current address?

A. 11 months.

Q. Where did you live prior to your current address?

1 A. There was a period in time prior to this
2 where I had several addresses I couldn't call any
3 which one my permanent address.

4 Q. Where did you live most recently prior to
5 your current address?

6 A. 36-29 212 Street, Bayside, New York 11361.

7 Q. How long did you reside at that address?

8 A. I had lived on and off at that address for
9 more than a decade. It is my grandparents' home.
10 They have since moved from that location however.

11 Q. Have you ever been deposed before?

12 A. No, I never have.

13 Q. Have you ever given testimony in
14 connection with a lawsuit or another legal
15 proceeding?

16 A. To the best of my memory no.

17 Q. Have you ever taken a deposition before?

18 A. By taken what do you mean, as an attorney?

19 Q. Yes. Have you ever taken a deposition as
20 an attorney?

21 A. I am not sure whether I had been formally
22 admitted to the Bar, but I was at a deposition with
23 another attorney and assisted. But I can't recall
24 whether that was just prior to or just after I had
25 been admitted to the New York State Bar.

1 Q. What was the nature of the case that you
2 assisted in taking a deposition?

3 A. I don't recall.

4 Q. Who were the parties of that deposition?

5 A. I don't recall.

6 Q. Just some quick housekeeping matters. You
7 understand that you are under oath, correct?

8 A. Yes.

9 Q. As you know, the court reporter will take
10 down everything that you say. He is typing
11 everything. So please try to respond verbally as
12 opposed to using gestures. If you have any
13 questions for me, please just ask and I will restate
14 the question. We can try and take breaks maybe
15 every hour or as needed. And if you need a break,
16 just go ahead and let me know.

17 A. Okay.

18 Q. Did you prepare for your deposition today?

19 A. I mean not really. I just kind of read
20 the time you had to be here and that was it. Made
21 sure I got some sleep.

22 Q. Did you review any documents as part of
23 your preparation?

24 A. No, I did not.

25 Q. Can you please turn to what has been

1 marked Exhibit No. 1.

2 A. Sure.

3 Q. Have you seen this document before?

4 A. Wait a second. Let me look at it.

5 Q. Sure. Take your time.

6 A. It looks similar to another document I
7 received but not identical.

8 Q. What is the document in Exhibit 1?

9 A. The document says at the top of it that it
10 is Amended Notice of Rule 30(b)(6) Deposition of
11 Ninja Entertainment Holdings, LLC.

12 Q. Did you review this document in
13 preparation for today's deposition?

14 A. No, I did not.

15 Q. Did you review the first Notice of Rule
16 30(b)(6) Deposition of Ninja Entertainment Holdings,
17 LLC prior to the deposition today?

18 A. I don't have that in front of me. I'm not
19 sure what you're referring to.

20 Q. Can you please turn to page 3 of Exhibit 1
21 identified as Schedule A.

22 A. Page 3. I'm looking at page 3, Schedule
23 A, yes.

24 Q. And do you see a number of definitions?

25 A. I see lines labeled A, B, C with text

1 after them.

2 Q. And do you see those lines following a
3 heading called Definitions?

4 A. Yes.

5 Q. Did you review these definitions in
6 advance of the deposition today?

7 A. No, I have not.

8 Q. Can you please turn to page 4 of
9 Exhibit 1.

10 A. Yes.

11 Q. Can you please review the topics listed in
12 1 through 23 of Exhibit 1.

13 A. You want me to read them aloud or just
14 read them to myself?

15 Q. Please read them to yourself.

16 A. Would you like me to also read the
17 definitions beforehand or would you like me to omit
18 reading them?

19 Q. Actually if you would like to read the
20 definition beforehand, please go ahead.

21 A. I don't really want to read them. If
22 you'd like me to I will. But I really, you know ...

23 Q. Well, I think we need to talk about the
24 topics that are listed in 1 through 23. And to the
25 extent that you're not familiar with the

1 definitions, then I think you'll need to review
2 those as well.

3 A. So to be clear you want me to read them.
4 So give me a minute and I'll read the definitions
5 and then the topics.

6 Q. Thank you.

7 A. Okay. I have read them over.

8 Q. You designated yourself as the person at
9 Ninja Entertainment with the most information to
10 testify on these topics today on behalf of Ninja
11 Entertainment; is that correct?

12 A. I will be the person discussing them, yes.

13 Q. Are you the person at Ninja Entertainment
14 Holdings with the most knowledge about these topics?

15 A. I'm not a member of Ninja Entertainment
16 Holdings so I'm not a person at Ninja Entertainment
17 Holdings. I'm an attorney that deals with them from
18 time to time and at one point was affiliated. But I
19 don't think I can really say that I'm the person at
20 Ninja Entertainment.

21 Q. Well, do you understand that pursuant to a
22 Rule 30(b)(6) notice you are obligated to identify
23 an employee, officer, or other person at the company
24 to testify on behalf of the company?

25 A. Can you define other person.

1 Q. It would be someone who is an authority to
2 represent the company and bind the company in
3 connection with their testimony.

4 A. In that case then yes, I can consider
5 myself the authority to bind Ninja Entertainment.

6 Q. Are you the person with the most
7 information and knowledge about the topics in this
8 notice to testify on behalf of Ninja Entertainment?

9 A. Yeah, I would say so. I mean I don't know
10 every person who works at Ninja Entertainment right
11 now, but I would guess that I have more information
12 than them.

13 Q. So you understand that the testimony you
14 give today is on behalf of the company Ninja
15 Entertainment?

16 A. Yes.

17 Q. And you feel comfortable testifying on all
18 the topics in Schedule A of the notice of
19 deposition?

20 A. What do you mean by comfortable? I don't
21 really feel comfortable about any of this proceeding
22 to be honest with you. But I'm going through it
23 because that's what we have to do.

24 Q. Can we agree to refer to Ninja
25 Entertainment Holdings as Ninja Entertainment in

1 this deposition?

2 A. Well, that's a little confusing. Ninja
3 Entertainment Holdings, LLC operates in connection
4 with a number of other LLCs under a capital
5 structure that was designed to limit liability and
6 provide a tax efficient operation for Ninja
7 Entertainment. So it is a little confusing to just
8 refer to them all as Ninja Entertainment given the
9 purpose and structure that they were designed to
10 fulfill.

11 Q. What are some of the other companies that
12 are related to Ninja Entertainment Holdings, LLC
13 pursuant to that capital structure?

14 A. Ninja Entertainment I, LLC; II LLC; III
15 LLC; IV LLC. There may be others in addition to
16 Ninja Entertainment Laboratories, LLC.

17 Q. What does Ninja Entertainment Holdings,
18 LLC do or what is the purpose of that company?

19 A. The purpose of it is to own the other
20 LLCs.

21 Q. So Ninja Entertainment Holdings, LLC is
22 really just a holding company?

23 A. That's why we called it Holdings.

24 Q. It doesn't buy or sell or have any
25 operations?

1 A. It just owns the other companies. That's
2 it.

3 Q. What does Ninja Entertainment I do?

4 A. I haven't been a member of Ninja
5 Entertainment in sometime, I would say over a year.
6 And to the best of my knowledge Ninja Entertainment
7 has undergone changes since that time. There have
8 been stores sold and so on and so forth. So I
9 really am not in a position to state whether Ninja
10 Entertainment formally owns Ninja Entertainment I,
11 whether or not it was a stock sale or an asset sale
12 or so on and so forth. So I really can't answer
13 those questions.

14 Q. Who would know that information?

15 A. I am guessing that the principal of Ninja
16 Entertainment Holdings would know.

17 Q. Who is the principal?

18 A. To the best of my knowledge that's Milton
19 Barr.

20 Q. What does Ninja Entertainment II do?

21 A. Same response to your question regarding
22 Ninja Entertainment I.

23 Q. You don't know what Ninja Entertainment II
24 does?

25 A. If that's what I responded to your prior

1 question regarding Ninja Entertainment I, then yes.

2 Q. What does Ninja Entertainment III do?

3 A. The same response as the prior question.

4 Q. What does Ninja Entertainment IV do?

5 A. Ditto.

6 Q. Who would have information about the
7 activities of Ninja Entertainment II, III, and IV?

8 A. The principal of those companies.

9 Q. Who is the principal of those companies?

10 A. At present I am not sure because I am not
11 a member of Ninja Entertainment. I'm just outside
12 counsel retained from time to time for various
13 specific matters.

14 Q. Who would you go to to find out the
15 information as to who is the principal of Ninja
16 Entertainment II, III and IV right now?

17 A. I would look up the website, you know, and
18 call whatever number was there and start asking
19 employees. That's one way.

20 Q. As serving as outside counsel to the
21 organization what individual would you contact to
22 find out this information?

23 A. Well, usually -- are you asking who
24 contacts me when I have a -- when Ninja
25 Entertainment wants something done? That's a

1 different question. I don't contact them, they
2 contact me. When they contact me for a job then I
3 obviously deal with people in the organization. But
4 I don't contact Ninja Entertainment. I don't buy
5 things from them. So that's a bit misleading.

6 Q. To the best of your knowledge does anyone
7 at Ninja Entertainment Holdings, LLC or any of its
8 affiliated companies or subsidiaries have more
9 knowledge than you on any of the topics in the Rule
10 30(b)(6) notice?

11 A. Again I stated I have not worked for Ninja
12 Entertainment for more than a year. I don't know
13 all the employees who work there. So clearly I
14 don't have all the information and I am not
15 competent to answer whether there's anyone who knows
16 more about this than me.

17 Q. As counsel for Ninja Entertainment
18 Holdings do you recognize that it is your
19 responsibility to identify the person with the most
20 information as to these topics --

21 A. Again --

22 Q. -- and present them as a witness in this
23 deposition?

24 A. As counsel to Ninja Entertainment Holdings
25 that's kind of a broad definition. As I said

1 before, I'm retained -- at this point in my career
2 I'm retained for specific jobs on behalf of Ninja
3 Entertainment Holdings. I'm not involved in the
4 day-to-day operations. So I would not state that it
5 is my duty.

6 Q. Are you counsel for Ninja Entertainment
7 Holdings in the proceeding before the Trademark
8 Trial and Appeal Board?

9 A. Yes.

10 Q. And we served upon you a Rule 30(b)(6)
11 notice because you were counsel for Ninja
12 Entertainment Holdings, correct?

13 A. Correct. At least to the best of my
14 knowledge yes. If that's what I saw in front of me
15 and it was served upon me, then yes.

16 Q. And so your response is that you didn't
17 know that you had a responsibility to identify the
18 person with the most knowledge to respond to these
19 topics; is that right?

20 A. Well, I believe the person to be me. But
21 then I don't know every person who works at Ninja
22 Entertainment Holdings. But to the best of my
23 knowledge given the fact that I don't know all the
24 employees, the person with the most knowledge would
25 be myself. I think it's unlikely that there's

1 anyone else who knows more. But if I don't know
2 every employee, how could I know for sure?

3 Q. Please summarize your educational
4 background since high school.

5 A. Since after high school I attended Queens
6 College, City University of New York. I majored in
7 political science and urban studies. I graduated in
8 honors in both disciplines, was awarded the Matthew
9 Weil Scholar Award for Excellence in Urban Studies
10 Scholarship.

11 I graduated in 2007 -- sorry, summer of
12 2007. In the fall of 2008 I attended Brooklyn Law
13 School, began my studies there. And I graduated
14 from Brooklyn Law School in 2010. That's the extent
15 of my formal education. There's a lot of other
16 informal activities I deem education, but I take
17 that to be the general import to your question, the
18 formal education and training that I received and
19 paid for.

20 Q. Have you been admitted to the Bar in any
21 states?

22 A. Yes. New York State.

23 Q. When were you admitted to the Bar in
24 New York State?

25 A. Sometime during 2011.

1 Q. What month in 2011?

2 A. I don't recall exactly.

3 Q. When did you take the Bar exam?

4 A. In 2010.

5 Q. You took the Bar exam while you were still
6 in law school?

7 A. No. I graduated in 2010 in I believe May
8 and I took it at the end of July 2010.

9 Q. Did you pass the Bar that you took in July
10 of 2010?

11 A. Yes.

12 Q. Are you admitted to the Bars of any states
13 other than New York?

14 A. No.

15 Q. Can you please summarize your employment
16 history since you graduated from Brooklyn Law School
17 in May 2010 until now.

18 A. So upon graduation I went and was employed
19 by a law firm, Robinson Brog Leinwand Greene
20 Genovese & Gluck in New York City. And I worked for
21 them as law clerk officially until I was admitted to
22 the Bar at which time I became an associate. I
23 worked in primarily litigation and also did some
24 corporate work for them.

25 I left that firm because I just felt that

1 I was kind of -- I had my personal reasons. I
2 wasn't satisfied with the practice of law and was
3 frankly a little bored. So I left and I went into
4 business with Ninja Entertainment. I was taken in
5 as a partner. We used various titles for ourselves
6 at Ninja Entertainment. Milton and myself were the
7 two principals. But there's no clean-cut way of
8 assigning saying one person is the CEO and has these
9 duties. We just kind of did everything together.

10 I left Ninja Entertainment -- I went to
11 Ninja Entertainment in I would say May 2011 and I
12 left Ninja Entertainment -- and I had already been
13 admitted to the Bar at this time. So if you're
14 looking to pin down when I was admitted, it was in
15 2011 prior to my leaving the law firm.

16 So getting back to where we were, I came
17 to Ninja Entertainment in May 2011 and I left Ninja
18 Entertainment I would say May/June 2012. At that
19 time I was not employed. I left, I came to -- I had
20 been studying Chinese in my own spare time and I
21 came to -- I had some money in my pocket so I came
22 to the Republic of China. I took a small job as an
23 English teacher and I started a life for myself
24 here.

25 And while I was here I began looking into

1 practicing law on the Internet, a virtual attorney,
2 counsel to companies and web-based companies. And
3 since I would say maybe March of 2013 that's
4 exclusively what I have done.

5 Q. What type of matters do you handle in your
6 current legal practice which I understand you have
7 done since about March of 2013?

8 A. I don't believe that's relevant to the
9 current proceedings. I object to that question.

10 Q. Your objection is noted for the record.
11 But you can go ahead and answer.

12 A. I handle various matters.

13 Q. What types of matters?

14 A. Matters that are of concern to anyone with
15 an interest in commercial law.

16 Q. So I think you stated that you worked at
17 Ninja Entertainment from May 2011 to May 2012; is
18 that right?

19 A. Yeah, that's about correct.

20 Q. Just to clarify, did you have a title with
21 Ninja Entertainment?

22 A. We referred to ourselves as various
23 things, you know, president, CEO, all types of stuff
24 just because that's what you do, you know, you need
25 a title in business. But really it was not that

1 formal. It is not like a big company like Apple or
2 Microsoft or anything you would think of. It was
3 kind of us and some employees.

4 And so any title we gave was, you know,
5 was just for show. It was just us and some
6 employees and we kind of divided up the tasks
7 without any specific -- I mean there was specific --
8 you know, Milt had been running the company and he
9 understood how the operations worked. But he didn't
10 really understand how to take it to the next level,
11 how to maybe incorporate the company, how all those
12 type of things worked. And he may refer to it as
13 front end/back end operations.

14 So my goal was to try to help him I guess
15 introduce formalities to the company, a company
16 policy, right, like so the company would do certain
17 things, have a policy to do certain things. But
18 that was kind of my role with the company.

19 Q. What type of policies did you help
20 develop?

21 A. Well, for example, you know, we have a
22 policy for employees, right, if an employee does
23 something, you need to write it up every single
24 time. So that if someone has to be fired, there's a
25 track record of what they did and your reason for

1 doing it. We wanted a policy of, you know, we don't
2 keep endless e-mails on a server so, you know, that
3 if, you know, law enforcement or anyone who wants
4 them can get them without a warrant.

5 We don't keep stockpiled in the back room
6 endless amounts of junk, right, so that's a fire
7 hazard. Or endless amounts of papers, right? We
8 destroy things and keep ourselves as lean as
9 possible to avoid liability and also to save costs.
10 We develop policies for, you know, for example
11 employees, what they should wear to work and what's
12 appropriate.

13 You know, we had policies regarding sexual
14 harassment at the workplace and how to report it.
15 All the sorts of things -- and these are just
16 examples. But all the sorts of things that you
17 would think that a company would need to comply
18 with, you know, by law and by prudent business
19 practice we sought to put in place.

20 Q. You mentioned earlier that it was you and
21 Mr. Barr and several employees. How many employees
22 were there with Ninja Entertainment during your
23 tenure?

24 A. It varied.

25 Q. What did it vary from? Can you give me a

1 range?

2 A. I would say it varied anywhere from, I
3 don't know, 15 to 55 maybe. At various times we did
4 have people that we would call officers who had some
5 decision-making authority that we would delegate to
6 them but it was limited in scope.

7 Q. Who were the officers?

8 A. At one point when I first got there there
9 was someone by the name of T.J. I'm not sure of his
10 full name. And also someone by the name of Durrell
11 but I'm not sure of his full name either. They were
12 more -- when I got to the company they were more
13 utilized by Milt at that time. And one of the
14 things that I felt when I got there is they had to
15 be phased out. And so I had never really worked
16 with them. I worked at getting the company to the
17 point where they could be phased out. I never
18 really dealt with them that much.

19 Q. So it sounds like your responsibilities
20 were largely to give some legal structure to the
21 organization. You drafted policies, you assisted
22 with employee management. Did you assist in
23 making -- I'm sorry, go ahead.

24 A. I mean those are some of the things that I
25 did, yeah. But if you can imagine as a company, I

1 don't know if you ever run a company, but there's
2 anything can happen, right, and it still has to get
3 done. So if one person is not around, the other
4 person does the best they can to fill in and take
5 care of it. So it is not like I had an agreement
6 that said I do these things and only these things.
7 You do what you have to do. So that's the -- what
8 you described, yeah, chiefly fell to me because I
9 was the one competent and capable on those fronts.
10 And so in that respect your statement is accurate.

11 Q. Well, then let me ask you if you could in
12 general terms describe what the scope of your
13 responsibilities were with Ninja from May 2011 to
14 May 2012.

15 A. It's hard to define -- I would say to do
16 what has to be done, you know. Milt was in charge
17 of operations for example. But if he wasn't around,
18 it would be my job to show up and make sure the
19 people, you know, weren't goofing off at work.
20 That's, you know, by way of example.

21 Q. What other things would you need to do in
22 order to, as you say, get things done?

23 A. That's too broad of a question for me to
24 even begin to answer.

25 Q. Daniel, I'm just trying to understand what

1 you did at the company. And you have shared that
2 you did everything that you need to get done.

3 A. Well, what are you --

4 Q. Perhaps you could just help me to just
5 give a little bit of context about what you did,
6 that would help us.

7 A. I mean what you're asking for though is
8 for me to basically state everything that Ninja
9 Entertainment did, everything that's involved in
10 running that company and then state back to you what
11 involvement I had. And what I'm saying is without
12 going through everything that it takes to run Ninja
13 Entertainment, my primary responsibilities involved
14 what we discussed.

15 But I also had a hand in maybe everything
16 else from time to time at varying different levels.
17 So I don't know if you counsel businesses at all on
18 their day-to-day operations or if you're just
19 involved in IP stuff that we're discussing today.
20 But I had, you know, from time to time I had to deal
21 in all types of things involved in running the
22 business.

23 Q. So at any given point you could have had a
24 hand in every aspect of the business?

25 A. Potentially, yes.

1 Q. Did you assist in making business
2 decisions?

3 A. From time to time, yes.

4 Q. So given that you had -- I'm sorry, go
5 ahead.

6 A. What exactly do you mean by business
7 decisions? That's a vague question. I'm not sure
8 what that means.

9 Q. Did you discuss non-legal matters with
10 Ninja or its principals or employees?

11 A. In my experience almost every matter has
12 legal consequences. So if you're asking if I
13 separated -- if I chose to look at a matter through
14 a context as a non-attorney, yeah. But pretty much
15 every conversation that comes up I choose to look at
16 it as an attorney as well. So that again is a
17 fairly vague question.

18 Q. What were your responsibilities with
19 respect to advertising?

20 A. I didn't really do much advertising. I
21 mean I guess my responsibility would be to say
22 whether there was a legal issue with an
23 advertisement that was put out or something of that
24 nature. But I was not -- I never ran a marketing
25 campaign for Ninja Entertainment. I can say that.

1 Q. In what capacity are you currently
2 employed by Ninja Entertainment?

3 A. I'm not an employee of Ninja
4 Entertainment.

5 Q. In what capacity do you assist or work
6 with Ninja Entertainment?

7 A. I am paid on a per matter basis to assist
8 in legal issues that Ninja Entertainment may have
9 from time to time.

10 Q. And that includes this TTA opposition
11 proceeding?

12 A. I am not sure if that's a matter that's
13 the subject of attorney-client conversations. So
14 I'm going to object to that question.

15 Q. Attorney-client privilege only applies
16 when there is a legal opinion rendered. A factual
17 matter is not protected by the attorney-client
18 privilege.

19 A. So the issue of whether you represent
20 someone and what you were retained to represent them
21 for is not something that's covered?

22 Q. No. I am just clarifying that you are the
23 attorney for Ninja Entertainment in connection with
24 the proceeding.

25 A. Yeah. You asked that earlier and I

1 believe I already responded. So I refer back to my
2 prior answer.

3 Q. And for clarification the answer is yes,
4 correct?

5 A. If that's what the record reflects. I
6 have already answered that question. I'm not going
7 to repeat myself.

8 Q. Just as a general matter I think we can
9 probably move more smoothly perhaps if you're
10 forthcoming with your answers.

11 A. Well, I believe I am. I believe we can
12 also move more smoothly and quickly if you refrain
13 from asking duplicative questions.

14 Q. Do you currently make any business
15 decisions at Ninja Entertainment?

16 A. No, I don't.

17 Q. Do you currently advise Ninja
18 Entertainment or Mr. Barr on any business matters?

19 A. What I discuss with Ninja Entertainment
20 and the subject of those discussions is the subject
21 of an attorney-client privilege.

22 Q. I respectfully disagree. The
23 attorney-client privilege only covers the rendering
24 of a legal opinion or discussions --

25 A. Right. And my discussions --

1 A. If so, then yes. If this proceeding
2 concerns advertising, then yes. If not, then no.

3 Q. When did Ninja Entertainment first hear of
4 Apple, Inc.?

5 A. I can't speak for everyone else at Ninja
6 Entertainment. But as a representative of Ninja
7 Entertainment, I perhaps first heard of Apple, Inc.
8 in the fifth grade playing Oregon Trail on a Mac
9 computer in the computer library at Woodman Park
10 Elementary School in Dover, New Hampshire.

11 Q. Around what year were you in fifth grade?

12 A. Probably around 1995.

13 Q. So it has been at least 20 years that
14 Ninja Entertainment has been aware of Apple, Inc.?

15 A. Well, I wasn't a representative of Ninja
16 Entertainment 20 years ago. Ninja Entertainment
17 didn't exist 20 years ago. So that's absolutely
18 impossible.

19 Q. What is the nature of Apple, Inc.'s
20 business?

21 A. Apple, Inc. does a lot of things. You
22 know, I'm not really sure at this point the breadth
23 and extent of what Apple does.

24 Q. To the best of your knowledge what does
25 Apple do?

1 A. They sell electronic devices and software
2 and, you know, advertising I believe. You know,
3 they do lots of things primarily involving I would
4 say software and electronics.

5 Q. What type of electronics are you aware of
6 that Apple, Inc. sells?

7 A. Consumer electronics.

8 Q. Do you agree that Apple, Inc. and its
9 consumer electronic products are widely known in the
10 United States?

11 A. I know about them. I can't speak for
12 everyone else.

13 Q. Based upon your own personal knowledge do
14 you think that Apple products are well known in the
15 United States?

16 A. I mean they have a lot of advertising in a
17 lot of states. You know, they're the largest
18 company by market capitalization. People use Apple
19 a lot. You know, those are facts that I can give
20 you but I can't tell you what everyone thinks. I'm
21 sure there's places in like, you know, Mississippi,
22 parts of Mississippi that aren't too tech savvy or
23 no one -- maybe no one has heard of Apple. They
24 might think you're referring to the fruit. I'm sure
25 there's places like that. But I can't give an

1 opinion for everyone in the United States.

2 Q. What are some brand names that you would
3 consider famous?

4 A. I live in the Republic of China. I
5 haven't -- so I really -- I don't, you know, right
6 now in America I'm not sure. I can tell you what's
7 popular here.

8 Q. What would you identify as a famous brand
9 in China?

10 A. What do you mean by famous?

11 Q. Well known. What would you identify as a
12 well known brand?

13 A. What do you mean by well known? Well like
14 that I know very well?

15 Q. Yes. What would you identify as a brand
16 you know very well?

17 A. I try to purchase generic and off-brand
18 merchandise as much as possible. So I don't really
19 know very many brands, you know, as a consumer that
20 well. I think as a subject of investment if I want
21 to invest in a company or a business structure as a
22 matter of academic interest, but I'm not entirely
23 sure, you know, as a consumer because I try to buy
24 off-brand merchandise as much as possible.

25 Q. What type of off-brand merchandise do you

1 buy?

2 A. I'm actually wearing a Nike shirt now.
3 This isn't off-brand. So I guess I know this
4 company.

5 Q. You'd consider Nike a famous brand?

6 A. Again I don't know what you mean by famous
7 per se. But I know that they have factories in
8 China where they make stuff, that people buy it
9 here, that people buy it in America, that Michael
10 Jordan wore Nike and was a sponsor for them, that he
11 has his own Air Jordan company which may still be a
12 subsidiary of Nike in some respect, that Nike has
13 large sales in America.

14 If you look at their quarterly reports
15 they'll reflect high revenues of sales in America.
16 And I'm sure Apple as well has reports that will
17 reveal high levels of revenue coming from America.
18 And if that's sufficient to make them well known or
19 famous, then I would agree. But I really am not
20 entirely sure what famous means, you know, in this
21 context.

22 Q. Do you think that Apple's Apple trademark
23 is well known?

24 A. Again you haven't provided me with a
25 definition of well known or famous. Is there a

1 at Ninja Entertainment to testify on this topic?

2 A. I can testify on this, yes.

3 Q. And are you the person with the most
4 knowledge?

5 A. I don't know what's inside of everyone
6 else's head, but I certainly talk to everyone, you
7 know, and that's why I'm retained. So I'm competent
8 to testify on it.

9 Q. When you say you have talked to everyone,
10 who did you talk to in order to --

11 A. Milt. By everyone I'm not referring to
12 just brick and mortar employees. I'm referring to
13 principal of the company I believe which I believe
14 is Milt Barr.

15 Q. When you were employed with Ninja
16 Entertainment from May 2011 to May 2012 did the
17 company own or use any Apple products?

18 A. By use what do you mean?

19 Q. Were there any Apple products owned by
20 Ninja Entertainment during your employment with the
21 company?

22 A. Are you asking for me to distinguish
23 between inventory and depreciable assets or --

24 Q. Yes. Let's take both of those in turn.
25 So inventory, did Ninja Entertainment have Apple

1 products in its inventory during the course of your
2 employment?

3 A. Ninja Entertainment had products which at
4 one time were owned and manufactured by Apple but
5 they were not ever purchased directly from the
6 manufacturer. All of Ninja Entertainment's
7 merchandise which may have been labeled with the
8 Apple brand had been purchased secondhand from
9 individuals who may or may not have purchased it
10 directly from the manufacturer or from an authorized
11 retailer.

12 Q. What type of Apple products did Ninja
13 purchase secondhand?

14 A. Consumer electronics.

15 Q. What types of consumer electronics did
16 Ninja Entertainment purchase secondhand?

17 A. Anything that Ninja Entertainment felt had
18 value beyond what the consumer wanted to return and
19 the cash value for the product.

20 Q. Can you please give me specific examples
21 of those consumer electronics.

22 A. A computer.

23 Q. What types of computers?

24 A. A computer made by Apple.

25 Q. What other types of consumer electronics,

1 direct from Apple. My take on that though is that
2 their devices were more likely than not purchased --
3 may have been purchased from Ninja Entertainment as
4 we gave employees a discount sometimes.

5 As far as the company goes, in the store
6 downtown there were a couple stores and those
7 stores -- I'm sorry, I just recall whether or not
8 they used Apple merchandise. They may or may not
9 have. It has been a year. I can't recall
10 specifically what machines were used.

11 Q. Do you personally own any Apple products?

12 A. Yes.

13 Q. What Apple products do you own?

14 A. I personally own an iPhone 5. I own an
15 iPhone 4S. And is there anything else -- that's
16 about it.

17 Q. How long have you owned your iPhone 4S?

18 A. I can't give an exact date. But I have
19 owned this phone since I was with Ninja
20 Entertainment. Since I was a principal -- since
21 before I left as a principal from Ninja
22 Entertainment. Actually, no. I'm sorry. I'm
23 sorry. That's not true. I had a phone with Ninja
24 Entertainment that was a 4S and it broke and so I
25 purchased another one from Ninja Entertainment at

1 some later point in time. Maybe August 2012, maybe
2 July 2012, somewhere in there.

3 Q. Have you ever been in an Apple retail
4 store?

5 A. Yes.

6 Q. When would you say is the first time you
7 visited an Apple retail store?

8 A. I don't recall.

9 Q. When was the last time you visited an
10 Apple retail store?

11 A. I don't recall.

12 Q. Was it in the past year?

13 A. I don't believe so.

14 Q. Was it in the past two years?

15 A. Yes.

16 Q. Have you ever been employed by Apple?

17 A. Never.

18 Q. Have you ever been affiliated or licensed
19 by Apple?

20 A. What do you mean by affiliated?

21 Q. However you might interpret the term
22 affiliated with. Have you ever considered yourself
23 affiliated with Apple?

24 A. No.

25 Q. Have any of Ninja Entertainment's officers

1 precise definition, I would be happy to answer it.

2 Q. Does Ninja Entertainment Holdings have any
3 business relationship with Apple?

4 A. You mean -- I would say -- I would say no.
5 But Ninja Entertainment does sell used Apple
6 products from time to time. I don't know if that
7 constitutes a business relationship under your
8 definition.

9 Q. Can you please turn to Exhibit No. 23.

10 A. Exhibit 23. Okay. Hold on. Okay. I'm
11 looking.

12 Q. What is depicted in Exhibit 23?

13 A. It looks like a screenshot of a Facebook
14 page.

15 Q. What do you see depicted in the screenshot
16 of the Facebook page?

17 A. Pictures.

18 Q. What pictures?

19 A. Typical stuff you'd see on Facebook like
20 like button, post photo.

21 Q. Do you recognize this Facebook page?

22 A. I don't know if I recognize this specific
23 page.

24 Q. You're not sure if you have ever seen it
25 before?

1 A. This specific page, I'm not sure.

2 Q. Is this the Facebook page for a Troll
3 Flickr account?

4 A. It says Troll Flickr next to the photo.

5 Q. Do you know who owns this Facebook
6 account?

7 A. In the top right corner it says Alicia so
8 perhaps you own it.

9 Q. Have you ever posted to this page?

10 A. I don't recall.

11 Q. Please take a few moments and flip through
12 the entirety of Exhibit 23.

13 A. Oh, I see. Yeah. My friend Navjyot has
14 this page. I just -- are you asking me about this
15 page in particular or about the Trollface? I'm a
16 little confused.

17 Q. What is the target audience of this
18 Facebook page?

19 A. It is really hard to say.

20 Q. To the best of your knowledge give it your
21 best shot. What would you say is the target
22 audience of this Facebook page?

23 A. You're asking why I like it? I can tell
24 you about why I like it but I don't think I
25 understand fully why the creator created or marketed

1 it towards people. I can tell you why I would. I
2 thought that face was hilarious looking. I liked
3 the face. It invoked positive emotions from me when
4 I saw it. You know, I wanted to laugh and smile
5 just like this face.

6 Q. Are you referring to the face in the --

7 A. Yes, I am. The face -- the blue face with
8 the smiling teeth and, you know, the little squinty
9 eyes with the ring -- the gold ring going around it,
10 that face.

11 Q. What would you call the face?

12 A. Trollface. I would call it that.
13 Actually if you want the story about how -- I can
14 give you the story about how I became interested in
15 this face. I had actually never seen it. My father
16 actually, who's in his fifties, and brother
17 discovered it and they thought it was funny. We all
18 got together one, you know, holiday season and my
19 dad would do this -- he would try to like with his
20 own face mimic the Trollface and it was really
21 funny.

22 And so we all kind of had all these inside
23 jokes about this face just because we liked it and
24 thought it was a great piece of art like visually
25 very, I don't know, descriptive and enticing. And

1 so I became a big fan of anything having to do with
2 this face based on that -- for that reason.

3 Q. Why do you visit this Facebook page?

4 A. Well, I had -- I had this friend Navjyot
5 in India who I knew through Facebook and I noticed
6 he created this page. And I was -- I just wanted to
7 support anything that -- you know, first I thought
8 it was a cool connection that oh, my friend likes
9 this and I would support anything having to do with
10 this face, you know, as long as it wasn't like being
11 used for racial discrimination or something
12 horrible. I just thought it was a great piece of
13 art.

14 I know that it has been used for many
15 different purposes from just seeing it on the
16 outside of restaurants to people using it with the
17 Occupy Wall Street movement to people just putting
18 it on their backpack and walking around. You know,
19 I think it has a lot of different meanings to many
20 people. And to me I just kind of like the positive
21 vibe and, you know, the kind of the humorous vibe
22 that it evokes.

23 Q. What's the relevance of the halo around
24 the Trollface?

25 A. I have no idea. I didn't even know it was

1 phone is being shown because I can't see the entire
2 phone.

3 Q. Please turn to Exhibit 24.

4 A. Okay.

5 Q. What is depicted in Exhibit 24?

6 A. A Facebook page. Sorry, a Facebook
7 timeline it appears to be.

8 Q. Do you see the Trollface depicted in
9 Exhibit 24?

10 A. I see an incomplete depiction of what may
11 or may not be a Trollface.

12 Q. Can you please read the paragraph below
13 About out loud.

14 A. Below About? Oh. It says: Trollface is
15 a black and white drawing of a face with a large
16 mischievous grin that's meant to portray the
17 expression someone makes while trolling. Would you
18 like me to go on?

19 Q. Yes, please.

20 A. For the record this is the first time that
21 I have actually read this in full, this specific
22 paragraph.

23 Posting a Trollface image into a forum
24 red -- into a forum thread is often used to claim
25 that someone was being fooled or intentionally

1 angered. The face commonly appears in rage comments
2 indicating the character is being mischievous in
3 some way.

4 Q. Do you agree with this meaning of
5 Trollface?

6 A. I disagree.

7 Q. How do you disagree or why do you disagree
8 with the meaning?

9 A. I think that this is one person's take on
10 Trollface, perhaps Alicia because it says Alicia in
11 the top right-hand corner. And that Trollface means
12 many things to many people and that this has been
13 cherry-picked perhaps by Alicia as to what it means
14 to that person.

15 Q. Was Ninja Entertainment aware of this
16 Facebook page prior to adopting the Crapple mark?

17 A. As I stated before, this appears to be the
18 same Facebook page you referenced earlier called
19 Troll Flickr. I do not recall at what time I became
20 a fan of this page. I do know that my friend
21 Navjyot created this page and that I liked it and
22 maybe commented a couple of times to support him and
23 also support this face that I deemed to be funny and
24 entertaining for the reasons stated earlier.

25 But at present I do not recall

1 specifically when I liked this page. Perhaps if you
2 did some Facebook research on me, which you may have
3 done, you could determine the exact date that it was
4 liked which would not necessarily be the precise
5 date that I became aware of it.

6 Q. Please turn to Exhibit 26.

7 A. Okay.

8 Q. What is depicted in Exhibit 26?

9 A. A Facebook page.

10 Q. Is this a Facebook page for Crapple?

11 A. When you say Crapple, what exactly are you
12 referring to? I'm confused. Are you referring to,
13 you know, the trademark and authorized -- something
14 authorized by the applicant by the trademark Crapple
15 or are you referring to a page labeled -- a Facebook
16 page that's labeled Crapple? I'm confused as to the
17 nature of the question. Are you asking if this page
18 has the word Crapple on it somewhere?

19 Q. You have a Facebook account, right?

20 A. Yes.

21 Q. And the Facebook account has your name?

22 A. Yes.

23 Q. And so that Facebook account is Daniel
24 Kelman's Facebook account?

25 A. So just to clarify, what you're asking is

1 does this Facebook account appear to be entitled
2 Crapple, right? You're not asking if it is -- if
3 you could state that question again. It was rather
4 broad. I'll ask you to state it more specifically
5 so I can provide an answer that can't be interpreted
6 more than one way.

7 Q. If I was looking at your Facebook page,
8 the Facebook page of Daniel Kelman, I would say this
9 is the Facebook page for Daniel Kelman.

10 A. You would --

11 Q. I'm asking you if you would consider this
12 the Facebook page for Crapple?

13 A. Well, I couldn't -- actually you might
14 not. My Facebook page is currently entitled Daniel
15 J. Kelman but I could entitle that page anything I
16 want to. I have friends who, you know, entitle --
17 give themselves nicknames on Facebook that are not
18 their actual name. But I would still refer to that
19 page as being the page of actual named person.

20 So you might not say -- you may or may not
21 say that this is Daniel Kelman's page. This may be
22 a page entitled Crapple who is owned by someone with
23 a name that's not Crapple. So I'm actually not able
24 to say this is Crapple's page because the name on a
25 Facebook page does not indicate who it is owned by.

1 Q. So you'd agree that this is a Facebook
2 page that identifies the name Crapple?

3 A. I would agree this is a Facebook page that
4 someone has labeled Crapple.

5 Q. Do you know who has labeled this page
6 Crapple?

7 A. Looking at this page I do not know. Maybe
8 Alicia because her name is in the top right corner.
9 Maybe Tom Hanks because he appears, you know, a
10 picture from his movie Castaway. But aside from --
11 maybe some of the other people who are labeled
12 beneath, you know, they're people who are invited.
13 Maybe someone who's posted on here, one of the
14 individuals. But offhand I -- I'm sorry, I do not
15 know.

16 Q. Is Ninja Entertainment associated with
17 this Facebook page?

18 A. I do not know.

19 Q. Who would know that information?

20 A. I do not know.

21 Q. What is depicted in the profile photo box
22 on the top left-hand side of the page?

23 A. It looks like a blue upside down Apple of
24 the nature of Apple's mark with a black background.

25 Q. Does this Facebook page depict Apple

1 products?

2 A. Can I scroll down and take a look?

3 Q. Sure. Take your time.

4 A. This page depicts photos of many different
5 things. Some are photos the inside of which may
6 include an Apple product next to another Apple
7 product. It may be a photo of people doing various
8 things, photo of coffee, photo of a broken product
9 that appears to be an iPhone, a product of what
10 appear to be predators in London, a broken Apple
11 computer, a broken phone which appears to be an
12 iPhone 3 or 3G. These are -- that's what it appears
13 to be. Those are the images I see on this page.

14 Q. Do postings to this Facebook page
15 criticize Apple's products?

16 A. One second. I'm reading through the page
17 so I can comment on everything in it instead of just
18 a portion.

19 Some of the references on here are not
20 clear. I'm not clear what they're getting at. Some
21 of them just point out factual historical events
22 like someone hacking an Apple server. You know, an
23 accusation that Apple faked evidence in a case.

24 I can see how, you know, someone could put
25 in the media or anyone could really spin this either

1 way they want to. It seems like there are some
2 criticisms of Apple. But in analyzing whether these
3 are Apple consumers who are trying to influence
4 Apple to go a certain direction or people who are
5 criticizing Apple for other reasons, I really can't
6 comment. I don't know.

7 Q. Please turn to the last page of
8 Exhibit 26.

9 A. I'm on the last page, yes.

10 Q. What is depicted in the middle of the page
11 above the word Crapple?

12 A. In the middle of the page above the word
13 Crapple? Above the word? I'm not sure. Are you
14 referring to where it says joined Facebook
15 October 31, 2009, what's above right from that?

16 Q. Do you see the word Crapple?

17 A. I see Crapple in the top left-hand corner
18 and then again to the left slightly to the right
19 beneath that word Crapple again I see a photo that
20 has the word Crapple in it. But I don't see -- then
21 at the very bottom of the page https:/ yada, yada,
22 yada Crapple. But I don't -- you're referring to
23 page 5 of 5?

24 Q. Yes. On page 5 of 5 do you see the word
25 Crapple depicted in the photograph?

1 A. Yes.

2 Q. What is depicted immediately above the
3 word Crapple in the photograph?

4 A. Like flushing 1299 down the toilet.

5 Q. What else do you see depicted above the
6 word Crapple in that photograph?

7 A. Above the word Crapple a sepia-colored
8 screen in which those -- that statement I just said
9 is contained within.

10 Q. Do you see the Apple logo depicted up
11 above the word Crapple?

12 A. Above the word Crapple. Oh, yes, above
13 that specific word, yes. I see a blue Apple logo.

14 Q. What do you interpret this picture of the
15 Apple logo above the word Crapple to mean?

16 A. I don't know.

17 Q. To the best of your ability --

18 A. This isn't my take on what Crapple is. So
19 I don't know what this person is trying to say.

20 Q. I'm asking you for your personal opinion
21 as you sit here today how do you interpret the Apple
22 logo above the word Crapple?

23 A. I think someone has wrongfully taken
24 Apple's trademark, this logo, and affixed it above a
25 name that they do not own.

1 Q. What does that mean to you?

2 A. It means that you guys need to go after
3 this guy, you know, and stop him from doing this.
4 Because they don't own -- because they don't own
5 this blue label. However, if they're using this for
6 free speech purposes, then they're perfectly
7 inclined to make that statement which may be what
8 they're doing.

9 I do not feel confident though -- I do not
10 feel comfortable quoting this artist and his, you
11 know, First Amendment right to make this speech and
12 stating what he is trying to do here. I'm not an
13 art critic. I have no background in selling art,
14 interpreting art. I have a personal belief, I can
15 tell you how it makes me feel, right? Like if I see
16 a face whether it makes me laugh or whether I like
17 it and would want to use it in my life. But I'm not
18 competent to state and interpret someone else's
19 artwork.

20 Q. I'm not asking you to make any
21 interpretations. I'm only asking you for your
22 opinion and your --

23 A. How it makes me feel?

24 Q. Your opinion and your understanding of
25 what the combination of the Apple logo and the term

1 Crapple as depicted here means?

2 A. What it says -- I don't know what it
3 means. But I can tell you how it makes me feel.

4 Q. I'm asking you what it means to you?

5 A. I don't know. I only know how it makes me
6 feel. What it means to me is it means that, you
7 know, people are enforcing their First Amendment
8 right to expressive speech and that's what it means
9 to me. I don't believe they're trying to sell
10 product here. So I believe it is First Amendment
11 speech and it is meant to further the interest of
12 First Amendment speech.

13 Q. What First Amendment speech do you think
14 is being communicated here?

15 A. Again I don't -- I'm not competent to
16 testify on the intent of the author.

17 Q. I'm not asking you about the intent of the
18 author. I'm asking you your interpretation of the
19 First Amendment speech that's being communicated
20 here.

21 A. You're asking me how it makes me feel? I
22 really don't know.

23 Q. I'm asking you what the First Amendment
24 speech is that's communicated by virtue of the Apple
25 logo above the word Crapple?

1 A. And I'm telling you that I don't know. If
2 you want an answer to that question, go to the
3 author. You know, you don't -- you know, you don't
4 ask a random person what a piece of art means. You
5 go to the author -- to the artist and ask them. I
6 don't know what it makes me mean. All I know is how
7 it makes me feel. That's the relationship that
8 individuals have with artwork who are not art
9 critics. I'm not an art critic.

10 Q. How does it make you feel?

11 A. It makes me feel proud to be an American
12 that we have -- that we can have our First Amendment
13 rights protected to make statements about
14 merchandise, about companies, as long as it is not
15 tied to any kind of, you know, sale or profit motive
16 which appears to be what this person is doing. But
17 I'm not going to offer my interpretation as to what
18 they're saying. My suggestion is that you ask such
19 person if you care to know.

20 Q. What company do you interpret this --

21 A. Well, I clearly understand --

22 (A discussion ensued
23 off the record.)

24 Q. (By Ms. Jones) What company do you
25 interpret this drawing to be speaking to?

1 A. Well, I would say that because there's an
2 Apple there that they're speaking about Apple,
3 right, because the mark is right there. But I would
4 say that the reason they choose to say Crapple might
5 be very different than what other people choose to
6 say Crapple, right?

7 The reason why it is selected is what's
8 important, not the fact that it is there. So that
9 word will mean different things to different people
10 and the artist really should comment here and state
11 why they said this. You know, you could go and
12 comment there and I'm sure he might respond back to
13 you what it means. But if someone else were to post
14 it and you were to ask on that person's page what it
15 means, they may very well give a different response.

16 Q. What does this picture say about Apple to
17 you?

18 A. You're asking if I were to post this why I
19 would post it? I wouldn't post it.

20 Q. I'm asking you sitting here in your
21 capacity as a person sitting here viewing this what
22 does this say about Apple to you? You've told me
23 that this is free speech and it is the communication
24 of something about Apple. And so I'm asking you
25 what it communicates about Apple?

1 A. Well, clearly Apple didn't make this,
2 right? This is obviously not something that Apple
3 put out. So I really think that it communicates one
4 random person on Facebook's opinion about Apple.
5 And it is kind of convoluted. I'm not really sure
6 what they're getting at. Apparently they think that
7 1299 is too much for whatever product they're
8 referring to which by the general import of this
9 image may have been made by Apple. Maybe they paid
10 1299 for the sepia-colored Apple monitor that I'm
11 viewing. And if that's the case, I would agree they
12 overpaid.

13 Q. So you see this use of the term Crapple
14 and the Apple logo as communicating a free speech
15 criticism of Apple?

16 A. I don't know if it is a criticism. I
17 think it is a criticism of paying 1299 for something
18 that Apple may or may not have made. I think you're
19 reading into it too much. You have to read into it
20 very specifically, right? It says -- the most
21 prominent thing in this photo is the fact that it
22 says like flushing 1299 down the toilet on top of
23 the sepia-colored screen which appears to be maybe
24 the -- one of the older Mac computer. It looks like
25 a very old screen. So if someone paid that much for

1 it after this page was created on October 31st,
2 2009, I would definitely say they overpaid and they
3 did flush their money down the toilet. And perhaps
4 that's what they're getting at.

5 Q. So I don't understand. I'm trying to
6 understand your perception and what you think this
7 means to you. That's what I'm trying to understand.
8 So perhaps you can just generally explain to me what
9 the Apple logo above the word Crapple communicates
10 to you in the context of someone overpaying for a
11 computer.

12 A. No. I am not commenting on just the one
13 little image out of this giant image you have
14 presented me. I'm commenting to you on how the
15 entire image -- how the viewer sees it affects me.
16 So you're trying to tell me to cut and sever one
17 piece of the image out. I can't do that.

18 First of all, that's not what the artist
19 intended who created this graphic image. They
20 didn't intend for me to look at that one little
21 thing and have that impact me. So I think it is
22 extremely unfair for you to ask me to consider that
23 one small piece of the graphic image and I'm not
24 going to comment on that. I'm going to comment on
25 how the entire image affects me and makes me feel.

1 And I believe I have done that.

2 Q. So I just want to make sure I understand
3 because it is not really clear to me. Are you
4 saying that the entire image is in your opinion a
5 free speech communication about Apple and it
6 communicates that someone has overpaid for Apple
7 products?

8 A. I didn't make the image so I don't know if
9 it is or it isn't.

10 Q. I'm asking you what it means to you. Not
11 what it meant to the author, not what it means to
12 anyone else. I'm asking what this image means to
13 Daniel Kelman.

14 A. What it means to me is it appears to be a
15 piece of graphic art that's meant to evoke feelings
16 from the viewer.

17 Q. What feelings is it meant to evoke?

18 A. I don't know what feelings it is meant to
19 evoke. I know what feelings it evokes from me
20 individually.

21 Q. What feelings does this evoke from you
22 individually?

23 A. That someone paid \$1,299 for an old
24 Macintosh computer and they feel they paid too much.

25 Q. And what does the word Crapple mean in

1 that context?

2 A. I don't know. I can only tell you how I
3 use it.

4 Q. That's what I'm asking. I'm asking you
5 what it means to you in that context.

6 A. I don't know what it means because I
7 didn't make the image. I can only tell you how it
8 makes me feel. I feel that someone has used the
9 image in a way I wouldn't use it.

10 Q. Why is that?

11 A. Because I wouldn't use the image with -- I
12 don't equate Crapple with Apple and I don't feel
13 that any reasonable consumer would equate Crapple
14 with Apple. I think any reasonable consumer would
15 think that Crapple was absolutely not put out by
16 Apple and I think it is ridiculous to assume that
17 anyone is going to think that there's an
18 association -- that there's some kind of confusion
19 that Apple has sponsored the mark Crapple in some
20 way.

21 Q. But you do believe that this is a
22 commentary on Apple?

23 A. Because there's the Apple logo there, yes.

24 Q. Was Ninja Entertainment aware of this
25 Facebook page prior to adopting the Crapple mark?

1 A. I don't recall. I actually believe no, I
2 don't believe we were.

3 Q. Please turn to Exhibit 27.

4 A. Okay.

5 Q. What is depicted in Exhibit 27?

6 A. A web page.

7 Q. What is the web page?

8 A. I'm scrolling around but I don't see a
9 hyperlink anywhere telling me what web page -- it
10 appears to be screenshots of a web page. But there
11 are no hyperlinks anywhere that I see -- hold on. I
12 want to go all the way to the bottom and look.

13 Yeah, there are no hyperlinks anywhere on
14 here. I'm not even sure if this is a web page.
15 These are just photos.

16 Q. Turning to page 1 of Exhibit 27, do you
17 see where it says Welcome to the CrApple Store, the
18 shit side of apple retail?

19 A. Hold on. I'm scrolling up to the top. It
20 is taking me a minute.

21 Yeah, I see where it says that.

22 Q. Is this a blog about a disgruntled Apple
23 store employee?

24 A. It says next blog at the top. But again I
25 see no hypertext anywhere on here indicating this is

1 an actual web page.

2 Q. Why don't you take some time and read
3 Exhibit 27 and then let me know what you believe
4 this to be.

5 A. Yeah. I have scrolled through a couple of
6 pages. I don't know if you want me to look through
7 more. But I see things that have Gates. I see
8 things that say posted by Crapple Store at a
9 particular time. I see where it says blog archive.
10 It has all of the indicia of an online blog except
11 for any kind of hypertext that would readily
12 identify where it is located and that it is in fact
13 addressed on the Internet to a registered site
14 sanctioned by ICAM.

15 Q. What is the subject of the content in
16 Exhibit 27?

17 A. Let me read through the entire page and
18 I'll let you know.

19 Well, here too also I notice that it says
20 Crapple one, Crapple two. Are these -- oh, I see.
21 So on the index the first -- it is indexed every six
22 pages or so. Well, it is 31 pages here I have to
23 read.

24 Q. How about you just go to the first page in
25 the About Me section and read the paragraph

1 following Crapple Store.

2 A. Okay. I read that. But it says View my
3 complete profile. You're asking me to give -- I
4 don't know what you're asking me. I can't click on
5 where it says View my complete profile. This isn't
6 a web page.

7 Q. Would you agree that this is a document
8 about an Apple employee at an Apple --

9 A. I don't feel comfortable --

10 Q. -- retail store?

11 A. Sorry. Finish.

12 Q. To the best of your knowledge is this a
13 blog about an Apple employee that worked at an Apple
14 retail store?

15 A. My knowledge is limited to the one
16 paragraph under About Me ending with what appears to
17 be a hypertext link that says View my complete
18 profile. So I really don't feel comfortable stating
19 what it is. But to the extent of my limited
20 knowledge, it appears to be someone who's compiled a
21 list of reasons why working for Apple retail is
22 fucking shit, whatever, you know, that's supposed to
23 mean and just spiral out of control which also is
24 pretty vague.

25 And this person -- oh, share the hate. So

1 this person clearly hated something to do with
2 working for Apple retail. But based on my limited
3 knowledge, which is -- which I'm certain is
4 incomplete because of the View my complete profile
5 button, that's what it appears to be.

6 Q. Had you ever read the Crapple Store blog
7 before it was taken down?

8 A. I have never read it before it was taken
9 down, no.

10 Q. Had you ever read it since it has been
11 taken down?

12 A. Is that possible?

13 Q. Have you ever read the Crapple Store blog
14 since it was taken down?

15 A. I'm not sure if that's even possible.

16 Q. It is a yes or no question.

17 A. I don't recall.

18 Q. Was Ninja Entertainment aware of the
19 Crapple Store blog before it adopted the Crapple
20 mark?

21 A. No.

22 Q. Can you please turn to Exhibit 15.

23 A. Okay.

24 Q. Do you recognize the web page depicted in
25 Exhibit 15?

1 A. The hypertext link in the bottom left-hand
2 corner of page 1 indicates that it is urban
3 dictionary.com.

4 Q. What is depicted on this page?

5 A. There are buttons at the top. There is a
6 number one following the word c -- lower case c,
7 lower case r, capital A, lower case p, lower case p,
8 lower case l, lower case e with a definition. There
9 is number two, it is all lower case C-R-A-P-P-L-E.
10 There's three, there's four. There's numerous
11 definitions all having different combinations of
12 words spelled the same way but with different
13 capital letters placed in them.

14 Q. So these are all definitions of the word
15 Crapple with various capitalizations of the letters
16 that make up the term Crapple?

17 A. I wouldn't say they're even definitions.
18 They're what some limited person, whoever owns
19 urbandictionary.com, has chosen to label this word
20 which may mean different things to different people.

21 Q. Let's take a look at definition number two
22 for the word Crapple. Can you please read that
23 definition.

24 A. Another name for Apple, who makes the
25 worst computers ever made except for word processing

1 (which my old 66 megahertz can do) and graphic
2 design. Tried to lure newbies in by making flashy
3 colors, but then craps on their heads. Hey, want to
4 play Jedi Knight: Jedi Academy. No, my mom bought
5 me a crApple. It doesn't support any games. That's
6 teh sux0rz.

7 Q. Would you agree that someone refers or
8 understands the term Apple to serve as another name
9 for Apple?

10 A. No. I think that someone posted -- I
11 don't know that whoever posted this agrees with the
12 definition they posted. This could be a satire, a
13 joke. It may not be serious. Urbandictionary.com
14 is not a definitive source of definitions like
15 Oxford's or Webster's. It's a comedy site. You
16 can't seriously quote a comedy site as truth. This
17 is intended to make people laugh.

18 Q. What do you think --

19 A. I think --

20 Q. -- the definition number two means?

21 A. I think it is a joke. I think it is
22 intended to make people laugh.

23 Q. What's the joke?

24 A. The joke -- the joke is that they're
25 making a comment about Apple's marketing and flashy

1 colors and people buying the computers who, you
2 know, don't clearly understand computing and then
3 they're upset because they can't play certain games
4 that they want to play on their computer. That's
5 what the joke is something, you know, to that
6 extent.

7 Q. And so that would be called Crapple?

8 A. I don't know. I didn't make the joke.
9 But someone is clearly making a joke. They might
10 call it that. I mean if you're -- if what you're
11 getting at is whether there's a way to take Apple
12 and then combine it with crap, yeah, I think --
13 yeah, I think -- yeah, I think, you know, some
14 people have done that. I think people at some point
15 in history have maybe taken the two and combined
16 them. And I see that someone has done it here to
17 make a joke.

18 Q. When Ninja Entertainment adopted the
19 Crapple mark, was it aware that some people combined
20 the terms crap and Apple to reference Apple's
21 products?

22 A. You say when we adopted the mark. When we
23 applied? I don't recall. But it was not the
24 reason. I don't recall whether we were aware --
25 that was not the reason why we selected the mark.

1 Q. But you might have been aware of the fact
2 upon filing your application for Crapple that people
3 referred to the terms crap and Apple as a reference
4 to Apple's products?

5 A. When you say upon filing, does that refer
6 to before, after, or the precise moment when it was
7 filed with the USPTO?

8 Q. At any point.

9 A. I mean the notion I believe came up later
10 on but it was not the reason why we selected the
11 mark.

12 Q. When you say the notion came up later on,
13 please elaborate.

14 A. It was mentioned.

15 Q. Who mentioned it?

16 A. I don't recall.

17 Q. Prior to Ninja Entertainment's adoption of
18 the word Crapple, had you ever heard someone use the
19 term Crapple to reference Apple's products?

20 A. No.

21 Q. What is MIB Ninja Entertainment?

22 A. MIB stands for Milton Isaac Barr who is
23 the person who was the founder of Ninja
24 Entertainment.

25 Q. What does that company do?

1 Entertainment has ever owned?

2 A. I really -- prior to my engagement of
3 Ninja Entertainment they may have owned more stores
4 and have been a larger enterprises. I'm not sure
5 going back that far. I can only speak when I began
6 working with Ninja Entertainment. And to the extent
7 of my knowledge I can only -- I really can only
8 accurately speak beginning in the period May 2011
9 and ending in May 2012 if you'd like my opinion
10 there.

11 Q. Yes, please.

12 A. There were two stores, two brick and
13 mortar facilities during that time.

14 Q. And one of those is the store that's
15 currently operating in Pittsburgh?

16 A. I am not sure if that -- to the best of my
17 knowledge that location the lease has ended and that
18 store is moving -- has either moved or will be
19 moving within the next 15 to 30 days.

20 Q. Where is the second store located?

21 A. All I know is it is all in Pittsburgh.
22 I'm not in Pittsburgh. I don't -- you know, I don't
23 know specifics of address and that kind of stuff.

24 Q. Do the brick and mortar stores both buy
25 and sell products?

1 A. Yes.

2 Q. Do they buy and sell consumer electronic
3 products?

4 A. Among other things.

5 Q. Do they buy and sell Apple's products?

6 A. Among other things.

7 Q. What percentage of the inventory if you
8 had to use a best guess do you think --

9 A. I don't feel --

10 Q. -- is made up --

11 A. -- comfortable giving --

12 Q. -- of Apple products?

13 A. I don't feel comfortable giving a guess
14 and I also don't see the value given that I don't
15 have any information on this that a guess would
16 provide you.

17 Q. I'll have to repeat myself because the
18 court reporter was not able to hear my question. So
19 if we could try and not speak over each other, we'll
20 make his life a lot easier.

21 A. I apologize.

22 Q. What is your best guess as to the
23 percentage of products sold by Ninja Entertainment's
24 retail store that are made up of Apple products?

25 A. I really -- are you finished?

1 Q. Yes.

2 A. I really am not sure as to how I could
3 wager a guess. And given the limited extent of my
4 knowledge on this subject, I'm not sure what value
5 it would be to you to wager a blind guess.

6 Q. Does Ninja Entertainment sell new Apple
7 products?

8 A. To the best of my knowledge no.

9 Q. Does Ninja Entertainment only sell used
10 Apple products?

11 A. Are you asking during my time at Ninja
12 Entertainment like for the last question and for
13 this question or are you asking at present?

14 Q. I'm asking you as the corporate
15 representative for Ninja Entertainment whether that
16 company sells used Apple electronics at any point in
17 time?

18 A. Used, yes.

19 Q. So they currently sell used Apple
20 products?

21 A. Yes.

22 Q. And how long do you think they have sold
23 used Apple products?

24 A. Since the inception of the company.

25 Q. What year was that?

1 business -- I'll explain why as well -- part of the
2 business is you want to give an accurate price for
3 the merchandise you buy so that you can sell it at
4 an accurate price, right?

5 And in order to sell and your profit
6 margin, calculating your margin, you have to look at
7 the amount of labor that's going to go into selling
8 a device which may include repairs, may include
9 listing online. So that all takes time. So the
10 first thing we do is we test the device and by
11 testing we inspect it to make sure it is legitimate.
12 We inspect it to see what type of external defects
13 there are with the device once we determine it is
14 legitimate. We run tests on the device to test its
15 functionality in terms of, you know, how the
16 software works, how the buttons on the outside of
17 the device work, so on and so forth.

18 Q. Has Ninja Entertainment ever applied to be
19 an Apple authorized reseller?

20 A. To the best of my knowledge no.

21 Q. Does Ninja Entertainment offer repair
22 services for Apple products?

23 A. At present I believe that Ninja
24 Entertainment engages with a third party that
25 performs these repairs for Ninja Entertainment

1 clients.

2 Q. Who is the third party --

3 A. I have --

4 Q. -- that makes repairs?

5 A. I am not sure at the present. It may be
6 more than one third party in addition. I'm not
7 sure.

8 MS. JONES: It is 11:10. We've been going
9 about two hours. Should we take a five-minute
10 break?

11 THE WITNESS: If you'd like one. I'm
12 okay.

13 MS. JONES: I could use a five-minute
14 break.

15 (A recess was had.)

16 Q. (By Ms. Jones) Is there anything about
17 your testimony from before the break that you'd like
18 to change or clarify?

19 A. No. I can't recall everything I said.
20 I'm just going to leave it as is.

21 Q. Has Ninja Entertainment ever been sued?

22 A. When you say Ninja Entertainment are you
23 referring to doing business like Mr. Barr doing his
24 business or the LLCs or what -- I'm not sure
25 specifically what you're referring to.

1 Q. (By Ms. Jones) We're back on the record.
2 I'm sorry I interrupted you. Who are Ninja
3 Entertainment's competitors?

4 A. There are various pawnshops and secondhand
5 stores in the Pittsburgh area that Ninja
6 Entertainment competes with. And there are also I
7 would say online there are other -- there are
8 retailers on -- you know, third-party eCommerce
9 websites who may also sell secondhand merchandise.

10 Q. Can you give us some examples of those
11 companies.

12 A. In the Pittsburgh area?

13 Q. Yes.

14 A. I can't give you examples of people on
15 other third-party sites. I mean I just don't know
16 their names offhand. And also too in the market for
17 selling merchandise and third-party eCommerce sites
18 people can create numerous names. So it is really
19 hard to identify who's who. But in the Pittsburgh
20 area there -- let me think for a second. I mean I
21 don't live in Pittsburgh. I don't know if these
22 places are still in business.

23 Q. That's okay. We can move on. Does Ninja
24 Entertainment offer its products for sale online?

25 A. I'm not sure if they offer them as Ninja

1 Entertainment's products. You understand? Like
2 they may offer them just as some user on a
3 third-party site. But those products are owned by
4 Ninja Entertainment and offered for sale. Ninja
5 Entertainment does not do business through a
6 privately-owned website. There may be products for
7 sale listed there but business is not done at that
8 place.

9 Q. I'm not sure I understand and I'm hoping
10 you can walk me through this. So let's turn to
11 Exhibit 2.

12 A. Okay.

13 Q. Is this an accurate depiction of Ninja
14 Entertainment's Home page as of August 1st, 2013?

15 A. I have not been to this site in a long
16 time so I don't know. But it does appear to have a
17 Pittsburgh-based phone number and it says Ninja
18 Entertainment. It has the white WordPress site, you
19 know, template that was I believe purchased for this
20 site. So it very well may be.

21 Q. And on this first page it is all Apple
22 products that appear to be offered for sale?

23 A. Actually what I see is I see a -- in this
24 WordPress screen there's one screen of many, right,
25 and there's an arrow on the right and arrow on the

1 left. And it appears that there was cherry-picked a
2 screen at the very top showing iPhone accessories
3 when in reality there would be rotating and
4 real-time several pages and the other pages may or
5 may not display other products.

6 Q. On this page which is depicted it features
7 Apple products for sale. So are these used Apple
8 products that were brought into Ninja
9 Entertainment's retail store and then they're
10 reselling them online?

11 A. It features Apple products but also
12 Nintendo products, Xbox products, and PlayStation
13 products. These products speaking from -- I mean I
14 don't know specifically about each one -- each
15 individual product. But the policy of Ninja
16 Entertainment is not to buy brand new products and
17 sell them. It is meant to sell used products and
18 our customers know this.

19 If you were to go to About, it would most
20 likely have something about that there. Or if you
21 were a regular customer of Ninja Entertainment you
22 would know this. Or if you clicked on the
23 description of the product it may identify more
24 about the product that it is -- I see a couple here
25 that do say used next to them.

1 Ninja Entertainment also from time to time
2 people will have what we call a new product they
3 sell us, an individual. Perhaps they go to a phone
4 company and they open up a plan and when they open
5 the plan they're given a deal to buy a phone for
6 \$200 that may cost 800 elsewhere and it is brand
7 new. And they continue really want this phone.
8 They need cash. So they'll sell us the phone for
9 maybe, I don't know, 300 a brand new, still -- you
10 know, you can call it a used phone in its original
11 packaging, right, if you wanted to be completely,
12 you know, grotesquely accurate.

13 And then we will then around and sell --
14 Ninja Entertainment will turn around and sell that
15 phone for maybe \$450 or something above that. But
16 in essence all the products come from consumers who
17 have already purchased those products in the open
18 market.

19 Q. And so that scenario that you just
20 described would include Apple products some of which
21 are depicted here on this page 1 of --

22 A. Oh, yeah.

23 Q. -- Exhibit 2?

24 A. They involve all types of products. I'm
25 sure Apples are included.

1 Q. So just to clarify, someone might buy a
2 new phone from a store, a cellphone carrier, retail
3 store. Let's say they buy an Apple iPhone and they
4 might choose to keep it in the packaging and then
5 bring it to Ninja Entertainment and then sell it to
6 Ninja Entertainment for a higher price and then
7 Ninja Entertainment would offer it for sale on its
8 website. Is that how it works?

9 A. Correct. But that the situation you
10 described is really 100 -- in my opinion 100 percent
11 facilitated by the subsidy that the
12 telecommunications companies pass onto consumers in
13 the form of a cellphone -- a premium cellphone
14 discount in order to attract those consumers. It's
15 not as if people are making irrational market
16 decisions to purchase a brand new phone and then
17 sell it to us at a discount so we can then sell it
18 at the original price and make money. It is that
19 telecommunications company subsidy that allows for
20 that phenomenon to occur.

21 Q. Are there documents or records that would
22 attract how many Apple products have been sold by
23 Ninja Entertainment?

24 A. I'm not sure.

25 Q. Who would know that information?

1 A. I'm not sure. Potentially Milton Barr. I
2 believe there are more accurate records kept about
3 the purchase of items because, you know, we want to
4 help combat theft. But once it has been determined
5 that there's no real concern there, you know, in
6 terms of keeping a lean company and not spending
7 money needlessly, we just track the profits. We
8 don't really track the items that sell. There may
9 be some way to extract those figures but I'm not
10 sure how offhand.

11 Q. Where would you have records about the
12 profits related to those sales?

13 A. Milton Barr I know hires accountants and
14 hires employees to compile those records and they
15 would most likely be able to provide a figure as to
16 the company profit margins for the year. I'm not
17 sure how that's relevant though and I object on the
18 basis of relevancy to that question.

19 Q. Does Ninja Entertainment offer its
20 products or offer Apple products for sale online on
21 any websites other than the Ninja Entertainment
22 website?

23 A. Again it is a bit unclear for me to answer
24 because when Ninja Entertainment offers them,
25 they're not being offered as Ninja Entertainment

1 products.

2 Q. Sure. That's fine. I'm just asking Ninja
3 Entertainment purchases products. Those products
4 which it purchases and sells, are they sold on any
5 other websites and if so what websites?

6 A. You're trying -- just to be clear, you're
7 trying to establish the channels in which Ninja
8 Entertainment sells the merchandise it purchases in
9 its stores. So yes, there are other online websites
10 that Ninja Entertainment deals with to sell
11 products.

12 Q. And what websites are those?

13 A. They include eBay and they include Amazon
14 when I was with the company. At present, you know,
15 there may or may not be other sites and those sites
16 may or may not still be in use.

17 Q. Are there documents reflecting the sales
18 of products on Amazon and eBay?

19 A. I'm not sure.

20 Q. Who would know that information?

21 A. Milton Barr or a company employee.

22 Q. Has Ninja Entertainment Holdings ever done
23 any advertising?

24 A. I mean advertising is an extremely broad
25 word. I'm sure you could construe some activity of

1 Ninja Entertainment to be advertising in some way,
2 shape, or form.

3 Q. Can you describe some of those activities
4 that you would consider advertising in some shape or
5 form.

6 A. I don't know. Having a sign in front of
7 your store that says Ninja Entertainment.

8 Q. Have they ever done any advertising on
9 television or radio?

10 A. To the best of my knowledge no, never done
11 any television or radio advertising.

12 Q. Has Ninja Entertainment Holdings ever
13 bought advertising on the Internet?

14 A. Ninja Entertainment has never engaged in
15 pay per -- through click ads or anything like that.

16 Q. Is there any other type of activity that
17 you would define as advertising that we haven't
18 covered --

19 A. Yes.

20 Q. -- that Ninja Entertainment has
21 undertaken?

22 A. I mean yeah. Just simply telling
23 someone -- you know, having a conversation with an
24 individual for example saying yeah, I'm with Ninja
25 Entertainment is a form of advertising. I mean, you

1 know, virtually anything is a form of advertising if
2 you're telling someone about your company. So to
3 that end there's lots of different things that could
4 be considered advertising.

5 Q. What else would you consider advertising?

6 A. It is so broad that I could go on for a
7 long time.

8 Q. Why don't you just give me a few examples.

9 A. Giving out a business card to someone that
10 identifies you as an affiliate with a company,
11 telling someone you work with a company, having --
12 like I said, putting an ad on Craigslist offering to
13 employ someone at a store is a form of advertising.

14 Q. Has Ninja Entertainment ever advertised on
15 Craigslist?

16 A. Yes. We've advertised -- I'm not sure
17 what we've advertised. But we have, as per my prior
18 statement what I consider advertising, posted ads on
19 Craigslist.

20 Q. So Ninja Entertainment has advertised
21 through the Internet and through storefront
22 advertising?

23 A. When you say advertise through the
24 Internet, again it is a very broad category. It
25 could be construed many ways. So in the very

1 broadest most limited sense -- and again I'm not
2 even sure what that means -- yes, we have advertised
3 on the Internet. And I'm not even sure how that's
4 relevant to this proceeding so I object on the issue
5 of relevancy to this entire line of questioning
6 about Ninja Entertainment's marketing of its own
7 company.

8 Q. Turning to Exhibit 2, where did Ninja
9 Entertainment get the photographs of the Apple
10 products depicted here?

11 A. I don't recall.

12 Q. Who would know that information?

13 A. I don't -- I'm not sure. An employee
14 hired by Mr. Barr might know. We may have -- we may
15 have hired a third party. In fact I believe we did
16 hire a third party outside person to build this site
17 and that person might not. I'm not sure who that
18 person is. This site is different also too than the
19 one I had created when I was with Ninja
20 Entertainment. So someone within the company would
21 likely know who was retained to build it and that
22 person would know.

23 Q. How is it different?

24 A. I think the logo is different. That's one
25 of the things that gives it away mainly. Also I'm

1 not -- I don't have in front of me -- I can't click
2 on buttons and see any of those things. Like I say,
3 it is a very incomplete picture. I don't even know
4 what the other photos in the scroll bar would show.
5 You have picked the one that shows an iPhone but I'm
6 sure there's other photos. So I really am not sure
7 of the extent that it differs from the original page
8 because of the incomplete photo I've been shown --
9 sorry, the incomplete nature of the photo.

10 Q. Who came up with the idea that eventually
11 turned into the website that was located at
12 www.crapple.com?

13 A. Who came up with the idea? You mean the
14 idea to create a website or the idea to trademark
15 Crapple or the idea -- I'm not sure which idea --
16 you know, it is more like several ideas you're
17 referring to that, you know, kind of evolved over
18 time. So it is kind of hard to say who came up with
19 the idea because it is not really one idea.

20 Q. Please walk me through that evolution that
21 you refer to.

22 A. Well, basically Milton Barr was my client,
23 right, in various respects. And my goal was to kind
24 of, you know, help make his business formal and then
25 also when I was with the company also help him

1 maybe -- how do I put this -- innovative, right? We
2 wanted to innovate the company.

3 And one of the things that I felt that he
4 did very successfully was deal with the local
5 customer base. But, you know, anyone involved in
6 business these days in sales looks to the Internet
7 to generate more sales. I mean how could you not.
8 It is a fantastic market.

9 So my goal was to try to find a way to
10 help Milt do more business online. I mean he
11 already did business online, right, through -- I
12 mean he didn't have a website of his own but he sold
13 products on third-party websites that we have
14 discussed. He had been engaging in that.

15 And I realized quickly early on that just
16 building your own website to sell is very difficult.
17 Lots of people do it but not very many people do it
18 successfully because most consumers go to these
19 preestablished channels, right, these preestablished
20 eCommerce sites that, you know, have been popular
21 for more than a decade.

22 So what we focused on was -- really at
23 first was a way of taking the entire operation
24 online. We had to start somewhere and where do you
25 start. We decided to start by finding a way to

1 obtain merchandise, right, because part of the
2 business is obtaining merchandise that's not too --
3 you know, that's at a lower price so you can sell it
4 at a high price.

5 So we decided instead of creating a site
6 where you would sell stuff, we'd create a site where
7 you buy stuff from consumers. And we realized this
8 was a good bet for several reasons. One, one of the
9 benefits of a secondhand store is that, you know, we
10 recycle stuff. This stuff is going to a dump. It
11 is dirty. It is going to pile up. We'd find
12 another use for it and put it in the hands of people
13 who, you know, who can't afford this stuff.

14 And so we decided to begin with that
15 aspect of the company and put that online. And, you
16 know, we were also very committed to having a
17 positive social impact on the community where we
18 operated. And so one of the things that we felt
19 was -- you know, we put cash in people's pockets,
20 you know, for stuff that they don't need. But we
21 feel we also give people access to merchandise that
22 they might not otherwise be able to afford.

23 So we initially looked at different
24 markets that we did business in and we sought to
25 identify the most rapidly developing market. And we

1 quickly noticed that smartphones were developing
2 very fast and it was brand new. Everyone was buying
3 them. And I predicted that just like, you know,
4 computers in the late eighties, early nineties
5 pretty soon everyone, you know, even poor kids were
6 going to want and have a smartphone. They needed
7 it. They needed it not just -- not just to talk
8 with friends but to be ingratiated into the
9 technology culture to get a job in 20 years.

10 So we hit upon an idea to try to make this
11 technology more affordable for people. We'd make it
12 more affordable by buying cheap phones or broken
13 phones, you know, phones that people didn't want at
14 a low price and then reselling them, you know,
15 making a little money but at a cheaper price. And
16 we thought we could do this by setting up a site
17 online to buy people's broken or used phones. And
18 so that's how the idea for creating a website that
19 would buy phones started.

20 Now, we thought of ways to brand it and
21 eventually came up with the name Crapple. But this
22 site when we envisioned it, it was not meant to be
23 just about smartphones. It was meant to be about
24 anything, right? It could be about anything. It
25 didn't have to be smartphones.

1 But as with any business, you can't start
2 with a huge picture. You won't get anywhere. You
3 got to start somewhere. And we thought that was a
4 very good starting point for our company for the
5 reasons I -- you know, the business reasons and also
6 the altruistic reasons which I thought would
7 generate good press, you know, and get us good --
8 good -- good feeling from possible angel investors
9 and, you know, anyone who might want to -- might
10 want to cover this story.

11 Q. Did you have any angel investors or other
12 investors?

13 A. No. We started -- we initially didn't
14 want to have any angel investors. You know, our
15 personal philosophy was we only take these people on
16 if we need it. We want to keep the equity in our
17 hands. Because a lot of times when you take on
18 people like that they have a different idea for your
19 company than you want. You know, our idea was
20 partially to make money but also to do some good.
21 And once you take on people like that, you know,
22 they just care about the bottom line. So we were
23 trying to keep them out of it as long as possible to
24 see where we could get it to.

25 Q. So you said in the beginning you decided

1 to focus on smartphones. Would that focus on
2 smartphones include Apple products?

3 A. Not exclusively in any sense of the word.
4 But it did include Apple products simply because
5 Apple products, specifically Apple smartphones, were
6 such a large -- had such a large market share at the
7 time and still do. So it would be -- you know, it
8 would be foolish for anyone not to consider them.

9 Q. Who owns the domain name Crapple.com?

10 A. That's a bit of a tricky question. You
11 know, the domain name currently exists in a GoDaddy
12 account that I control. But the name was purchased
13 and owned by initially I believe by Holdings but I
14 could be mistaken. The current owner is a separate
15 company which I'm not sure offhand if it is owned by
16 Milton Barr or if it is owned by a holdings called
17 Ninja Entertainment Laboratories. I believe it is a
18 single purpose entity that exists for no other
19 purpose than to own this company -- I'm sorry, than
20 to own this domain.

21 Q. And that entity is Ninja Entertainment
22 Labs?

23 A. Ninja Entertainment Laboratories, LLC,
24 yes, I believe that's what it is.

25 Q. And that's an affiliate or subsidiary of

1 calling and had some phone conversations and it came
2 to an agreement to sell.

3 Q. What were the other websites that you
4 considered purchasing?

5 A. I don't recall offhand.

6 Q. Did they all include the term Crapple?

7 A. They may or may not. I don't recall.
8 They all included crap or shit to some degree. A
9 lot of them included adding an L to the end of some
10 word but that's about it. That's about as much as I
11 remember about it.

12 Q. Is there a written --

13 A. Shittle is one. We thought shittle was
14 really funny.

15 Q. Is there a written agreement transferring
16 the domain name from the prior owner to you?

17 A. There was one -- there was one executed.
18 And I have -- to be honest, I'm not sure where the
19 physical signed document is. I have a copy of a
20 template that we sent. I may have a copy of -- if I
21 looked on my brother's computer he may or may not
22 have a copy of this signed document that was
23 transferred to us.

24 But to be honest, once it was transferred
25 to us we weren't too concerned about the document

1 because, you know, transferring all right, title,
2 and interest. Because once the guy went through the
3 steps with GoDaddy, which I believe was the site we
4 used to transfer it, you know, that's enough of a
5 legal protection for us to not have to worry about
6 him laying claim to it later on. Like why did the
7 guy transfer it and then say nothing for all this
8 time. So we weren't too worried about that. We
9 also had records of having paid him. I'm sure, you
10 know, if we dug through bank records, you know, we
11 could figure out the name of this guy. I think his
12 name was Nigel. Nigel -- Nigel Clown. I don't
13 remember his last name. It was Nigel something.

14 Q. How much did you pay for the Crapple.com
15 domain?

16 A. I'm not sure. I would like to say 2,500
17 bucks. I'm not sure offhand though.

18 Q. What was the Crapple.com website used for
19 before you bought it?

20 A. For a long -- all I remember is Nigel
21 telling me is he had -- when I looked at it there
22 was nothing up there, nothing. Wasn't even used.
23 He said he hadn't had anything up there for years.
24 He said that -- I didn't get it into it with him but
25 he said that he had used it for some sort of college

1 project in the early 2000s, you know, and then that
2 was it.

3 Q. Did he explain what type of college
4 project it was for?

5 A. No. We didn't really care.

6 Q. Your communications with Nigel to purchase
7 the domain, were those by e-mail?

8 A. Telephone.

9 Q. When did you purchase the domain?

10 A. I don't recall exactly. I think it was --
11 yeah, I don't recall exactly.

12 Q. Who created the content for the Crapple
13 website?

14 A. That was me. I wrote -- I wrote the
15 physical paragraphs if that's what you're referring
16 to. As far as designing the page, that was not me.
17 But the actual words that were on the page were text
18 that came from my brain.

19 Q. And you said the design was done by
20 someone else?

21 A. Yes.

22 Q. Who did the design?

23 A. The guy's a professional cricket player in
24 Bangladesh who also designs websites. His name is
25 Masudur Rahman. I believe I have given you guys all

1 his contact info as far as I have it in the
2 documents. I'm not sure what his e-mail is offhand
3 but I believe I have provided it. It is probably in
4 one of the exhibits you have.

5 Q. When did work begin on the Crapple
6 website?

7 A. I don't recall exactly. I don't recall.

8 Q. Was it after you started with Ninja in
9 May 2011?

10 A. Oh, yeah, absolutely.

11 Q. What were your plans in order to design
12 the website? What did you instruct the website
13 designer to do?

14 A. What I told him was we wanted -- we wanted
15 just a WordPress site, right, straight up WordPress,
16 cheap one. And what we want is right on the front
17 page to have a listing of all the different phones
18 we buy going from top to bottom with just phone,
19 phone, phone, phone, price, price, price, price and
20 that's kind of it. You click on a phone, like you
21 would see the front page, it would have our name at
22 the top, you would see the phone you want advertised
23 right on the front page -- not the phone you want,
24 the phone you want to sell, the phone you currently
25 own. And you would click on that phone new, used,

1 or broken, right, and then it would have a price
2 next to it and it would take you to another page.
3 And from there it would give instructions on how to
4 send it in and how you get paid, so on and so forth.

5 Q. Were there drafts of the website at its
6 various stages before it went live?

7 A. I don't -- I don't recall. We -- I recall
8 talking with the guy, you know, and I recall seeing
9 the finished site. But I don't really -- he may
10 have sent me a screenshot here or there of the site
11 but I don't have those e-mails.

12 Q. Would those be e-mails from after May
13 2011?

14 A. Yeah.

15 Q. What would have happened to those e-mails?

16 A. I have a policy of deleting everything
17 older than six months. So I don't keep it around.
18 In fact I normally delete stuff sooner than that. I
19 like to keep a pretty lean in box. I think any
20 attorney would do the same and counsel their clients
21 to do the same.

22 Q. So tell me a little bit about your e-mail
23 deletion policy. You only keep things for six
24 months or you delete them immediately. Are they
25 still kept in your trash or deleted file?

1 A. Okay.

2 Q. Do you recognize this page?

3 A. It says web.archive.org. I'm not familiar
4 with this website.

5 Q. Do you recognize the other content,
6 Crapple is coming in 2012?

7 A. Oh, yeah, I recognize that.

8 Q. What is it?

9 A. Well, when we first put up a Crapple page
10 it said that somewhere at the bottom. But to be
11 clear, I see what you're getting at. The web
12 designer did not put this up. Okay. This is
13 something that I personally put in place because I
14 had no idea how to build a viable website. And this
15 was done sometime in 2011 I believe but I'm not sure
16 exactly when.

17 This is not the site I was referring to.
18 If you actually go back and listen to what I said, I
19 discussed the site involving lists of phones that
20 the developer developed, not this. So if you're
21 trying to make an association between the two in my
22 prior statement, that's not the case.

23 Q. Who manages the info at Crapple.com --

24 A. Okay. There were numerous --

25 Q. -- website or e-mail address?

1 A. Sorry. Are you finished?

2 Q. Who manages the info at Crapple.com e-mail
3 account?

4 A. There were numerous @Crapple.com e-mail
5 accounts and they all went back to the same GoDaddy
6 account that was mine. Does that answer your
7 question?

8 Q. Did you ever receive any e-mails by virtue
9 of this Crapple is coming in 2012 web page featuring
10 the info@Crapple.com?

11 A. So many e-mails you wouldn't believe it.

12 Q. Did you retain any of those e-mails?

13 A. I don't recall. I haven't logged in to
14 the GoDaddy account in quite some time to check
15 them.

16 Q. What was the most common nature of those
17 e-mails?

18 A. 100 percent spam.

19 Q. Did you ever receive any donations?

20 A. No.

21 Q. Please turn to Exhibit No. 5.

22 A. Okay. I'm looking.

23 Q. Do these pages in Exhibit 5 depict the
24 Crapple.com website?

25 A. More or less, yeah.

1 Q. When did the Crapple.com website go live
2 as it showed in this exhibit?

3 A. I don't recall the exact date.

4 Q. Roughly when do you think it went live?

5 A. Sometime when I was with Ninja
6 Entertainment, you know, between May and May 2011,
7 2012.

8 Q. The Crapple.com website offered to
9 purchase Apple products both new, used, and broken;
10 is that right?

11 A. Yes.

12 Q. Were any products ever purchased through
13 the Crapple.com website?

14 A. Never.

15 Q. How long was the website live before it
16 was taken down?

17 A. I don't recall. I don't recall exactly.

18 Q. Do you have any idea of roughly how long
19 it was live?

20 A. A period of months.

21 Q. So Crapple.com never had any customers?

22 A. Never.

23 Q. Turning to page 1 of Exhibit 5, would you
24 consider the orange with the Trollface to the left
25 of the Crapple mark a Crapple logo?

1 A. We actually never got licensing for the
2 face. We figured the kid who made it was pretty
3 cool about it. I e-mailed him once about it but he
4 never got back. We just kind of liked it. We were
5 actually thinking of putting something else up
6 because we weren't sure if we were going to get
7 licensing for it. But, you know, we came out with
8 it and put it up there I guess as something
9 initially to have.

10 But it wasn't really intended to represent
11 Crapple in the long term or long-term vision. It
12 was just kind of a placeholder until we got
13 everything together. I mean what you see here on
14 this site we put up was not the end game, you know.
15 These things develop and you guys stepped in right
16 in the middle of our plan and we kind of took it
17 down out of respect for these proceedings. But we
18 didn't put time into SCO or any of these things we
19 would have put time into that would have required us
20 to get first the official logo we wanted and
21 licensing for any art we would have had up.

22 Q. So the logo depicted here is it generally
23 an orange with the Trollface on it and then an
24 antenna coming out of the top of the orange?

25 A. I don't know. It wasn't really -- it was

1 just an orange dot. You know, at first it was just
2 an orange dot. I just it looks kind of like an
3 orange now. But, you know, Milton had been in
4 Florida and, you know, he loved orange -- we thought
5 too that orange was a very good color for a company.
6 We couldn't think of a lot of other companies that
7 used orange exclusively.

8 I thought it was bright and fun and nice
9 and we thought an orange dot would be cool and we
10 kind of put the leaves on it because in effect we
11 supported recycling. We were a green company. So I
12 can see how that looks kind of like an orange but I
13 respectfully decline.

14 Again this was my idea to have -- you
15 know, Milt wanted orange. He had an association
16 with Florida to this that I did not have. I just
17 liked the orange dot. And that's really it was an
18 orange dot with an antenna for electronics.

19 And then we were considering changing it
20 to make it more clear. We wanted some kind of green
21 association because we were a company involved in
22 recycling. And that's really the import that I as
23 an artist, you know, with my own graphic design I
24 had helped, you know, was trying to put forward. I
25 really didn't like the idea of an orange. I don't

1 really get it.

2 Q. Why does it look like an orange if you
3 don't get it?

4 A. Why does it look like an orange? I mean
5 first of all an orange doesn't really have leaves
6 coming off of it. But I guess in the wild when you
7 grow an orange they do have them. I have seen
8 oranges sold in Taiwan with leaves like that coming
9 off it. So I guess they do.

10 Q. So how would you describe what this is?
11 You would describe it as an orange circle with
12 leaves coming out of it and an antenna, that is how
13 you describe the logo?

14 A. Yeah. I wanted like a piece of like -- I
15 wanted to create something that represented our
16 company and the different things that we represent.
17 So we started off, you know, one of the goals we had
18 was to make electronics more affordable to people
19 who can't afford them, the young kids growing up.
20 And one of the ways we do that is by selling them
21 used so we can afford them. So we have the antenna.

22 Crapple may sell many things but we
23 started off with used products that are electronics.
24 We have the antenna. We're green. We help, you
25 know, recycle merchandise. So I wanted something

1 that reflected that. I felt that the green arrows
2 recycling may have been something that's trademarked
3 so we just grabbed this.

4 And then we had an orange dot because Milt
5 liked the idea of something orange, you know, and
6 then we threw the face on there because it was like
7 an inside joke with all of us, you know, my brother
8 and my dad with this face we liked. And, you know,
9 the face made it fun. And it kind of had the other
10 things it represented for us. But to me it was not
11 really intended to be an orange. Yes, I mean I
12 could see how the leaves maybe make it look that way
13 but that wasn't my intention.

14 Q. Did you draw the logo?

15 A. I didn't draw anything.

16 Q. Did you create that logo?

17 A. Yes.

18 Q. What's the meaning of the Trollface --

19 A. I just --

20 Q. -- in the logo?

21 A. -- explained this. I believe I just
22 explained this. Sorry. Finish your question. I
23 apologize.

24 Q. What's the meaning of the Trollface in the
25 logo?

1 They would take it as a company that's seeking to
2 buy phones some of which are Apple, some of which
3 are not, and there may be something there. But if
4 there is, why are they advertising all these other
5 phones as well. I think it is -- it is more complex
6 than you make it out to be in your questions with it
7 loaded.

8 Q. What do you intend for people to
9 understand Crapple and this logo to mean?

10 A. I have already answered that question. I
11 went through and explained the reason why different
12 aspects of the logo were selected.

13 Q. Right. You have explained why they were
14 selected but you didn't explain what you intend for
15 them to convey to consumers.

16 A. Oh. I intend them to convey to consumers
17 a feeling of happiness, funniness, you know, maybe
18 want to laugh looking at the face, a feeling that,
19 you know, we deal in electronics and we're a green
20 company.

21 Q. What does the term Crapple mean to you?

22 A. A piece of crap, a hunk of junk. You
23 know, really with Crapple what we intended was to be
24 the merchandise we purchased is crap, is Crapple,
25 stuff people didn't want it anymore but it has use

1 to someone else, right? So that's all it is.

2 Q. And those products that you referred to as
3 Crapple would include Apple products, correct?

4 A. It includes every item that Crapple would
5 purchase on the website.

6 Q. And that includes Apple products, correct?

7 A. Yeah. Among many, many other types of
8 products the bulk of which are not Apple products.

9 Q. Looking at Exhibit 5, starting on page 2
10 through 6, my understanding is this is basically a
11 printout of what the Crapple website would have
12 looked like on June 26th, 2012; is that right?

13 A. I would say no because a lot of stuff that
14 appears to be cut off. Like I see it says Check and
15 then there's a dot with one. That's not accurate.
16 It also says Privacy and then beneath it it says is
17 this one of -- is your item one of these. I mean it
18 appears that someone took different parts of the
19 site and cut them into pieces and then pasted them
20 back together.

21 But if your question is did we have a
22 screen like this that said is your item one of these
23 and then the first line listing Motorola Droid 4,
24 Motorola Droid Razr, Samsung Galaxy Note, Samsung
25 Epic Touch, Samsung Galaxy Nexus, new, used, and

1 broken prices, then yes, this is our site.

2 Q. So the first line of products are
3 Motorola, Samsung, and that seems to be it, right?

4 A. Right.

5 Q. And then the remaining seven lines of
6 products are all Apple products?

7 A. Yeah. But again like as I explained
8 before, it appears as if this site has been cut into
9 numerous pieces and I don't know which pieces have
10 been selected, which pieces have been omitted. So
11 I'm being presented with a wholly incomplete picture
12 of what appears to be the Crapple.com website on
13 June 26, 2012 at 10:56 in the morning somewhere on
14 planet earth.

15 Q. Well, I'll represent to you that this is
16 the Crapple.com website printed to PDF at that date.
17 We didn't do any cutting and pasting. This is just
18 how your website prints to PDF.

19 A. Okay.

20 Q. So it appears to me that the website while
21 it was live had one row of non-Apple products and
22 then seven rows of Apple products; is that right?

23 A. At this one day, at this one day and
24 one -- snapshot at 10:56 and 30 seconds past the
25 minute, yes. And again, you know, we may have been

1 Q. Do you have any documents that would show
2 the Crapple.com website depicted in any other
3 manner?

4 A. No. But you might go and use the Wayback
5 Machine to check for other merchandise. I didn't
6 even know that was possible. It is pretty cool.

7 Q. Can you please turn to Exhibit 6.

8 A. Yep.

9 Q. Is this the Log In page from the
10 Crapple.com website?

11 A. It appears to be, yes.

12 Q. What would the Log In page have been used
13 for?

14 A. Well, in order for someone to send us a
15 phone, you know, they had to create an account,
16 right, we have to pay them somehow. And in order to
17 pay them, you know, we need payment info, we wanted
18 to send them a box, you know, if they needed a box
19 to send us a phone, a self-addressed stamped box.
20 So this was a mechanism for us to communicate with
21 our clients of which we had none to send them a box
22 if they needed one, to ask them if they wanted to
23 get a newsletter maybe that we didn't have yet to
24 see if they needed -- wanted, you know, anything
25 that a company, you know, uses to keep in touch with

1 their customers.

2 Q. Did anyone ever register?

3 A. To the best of my knowledge one day I was
4 very excited because we had someone register and it
5 was like early on. But it turned out to be Milt.
6 So unless you count him as a customer, no.

7 Q. Please turn to Exhibit 7.

8 A. Okay.

9 Q. Is this the Contact page from the
10 Crapple.com website?

11 A. Yes.

12 Q. What was this used for? Was it for people
13 to register?

14 A. No. People might have questions about how
15 the company works or, you know, like, you know,
16 imagine you have a company that seeks to buy
17 people's phones. You can't pay them beforehand.
18 You're going to get scammed, you know, out of your
19 mind.

20 So what we did is we felt that it was
21 important to communicate with people so that they
22 had some kind of confidence that we would when they
23 sent us their phone and we inspect it and it was as
24 they represented -- new, used, or broken -- that
25 they would in fact get what they coming to them,

1 There's probably a junk load of spam there I don't
2 feel like going through.

3 Q. So when you received the document request
4 from us did you go through that e-mail account to
5 see if there was anything responsive?

6 A. I dug through, I flipped through
7 everything, but all I saw was spam. But I haven't
8 been there in, you know, a long time to actually do
9 business on that site.

10 Q. Please turn to Exhibit 8.

11 A. And by the way, when you ask me questions
12 sometimes it may come out as unclear whether I'm
13 responding as an attorney or I'm responding as an
14 individual of Ninja Entertainment who's named in
15 this proceeding. So maybe in the future I'll do
16 what I can to make my responses more clear.

17 But as far as going to that site to
18 actively manage the Crapple in box, I don't do that
19 anymore. But as far as partaking in due diligence
20 in your discovery request as an attorney, that's an
21 entirely different question.

22 So okay. Moving along. I see the site,
23 Exhibit 8.

24 Q. Is this the Press page from Crapple.com?

25 A. It appears to be, yes.

1 Q. Did Crapple.com ever have any press,
2 receive any press?

3 A. Not that I'm aware of.

4 Q. Please turn to Exhibit No. 9.

5 A. Okay.

6 Q. Is this the Privacy page from Crapple.com?

7 A. It appears to be, yes.

8 Q. This Privacy page references Crapple, LLC.
9 What is Crapple, LLC?

10 A. We intended to create an LLC labeled
11 Crapple for the site. But once we -- this
12 opposition really got underway, at some point during
13 it we just decided to stop that investment because
14 we weren't sure what was going to happen and what
15 you guys were prepared to do. So we just stopped.
16 And like I said, this site never had any customers.
17 It wasn't really complete in any sense of the word.
18 So that's all that represents.

19 Q. So Crapple, LLC doesn't exist?

20 A. No, it doesn't exist.

21 Q. Who wrote the Privacy Policy?

22 A. I did.

23 Q. Can you please turn to Exhibit No. 10.

24 A. Okay.

25 Q. Is this the Terms of Sale Agreement from

1 the Crapple.com website?

2 A. Yes, it appears to be.

3 Q. Did you write these terms?

4 A. Yes, I did.

5 Q. Turning to the second to the last page of
6 Exhibit 10, it says Last Updated: December 19th,
7 2011.

8 A. Yeah.

9 Q. Was the website live featuring these terms
10 on that date?

11 A. No, I don't believe that's a reference to
12 the date. So when I created this I created it from
13 another, you know, site and used that as a template.
14 And I don't -- I think that's just an error. I
15 never corrected the date when theirs was last
16 updated. That has absolutely no relevance. It is a
17 mistake.

18 Q. What website did you copy it from?

19 A. It wasn't copied. But I took
20 Gazelle.com's terms and used them as a template to
21 create our own.

22 Q. Can you please turn to Exhibit 11. Is
23 this the About Us page from Crapple.com?

24 A. It appears to be, yes.

25 Q. So the first line in the second paragraph

1 says: Crapple provides the most straightforward
2 method for getting paid for your used electronics.
3 The price you see on our home page is the amount you
4 will receive for your piece of Crapple. I've got
5 that right?

6 A. Yeah.

7 Q. So basically all of the products depicted
8 on the website are pieces of Crapple?

9 A. I mean that's intended to be like a joke
10 and a satire for our customers who no longer want
11 the phone that they're sending us.

12 Q. And the joke is that the phone they're
13 selling to you is a piece of crap?

14 A. No. The joke is that the phone that
15 they're selling to us is probably they don't want it
16 anymore. Like why would you sell a phone you still
17 want. That's the whole point of this company, it is
18 something someone else doesn't want. You don't want
19 it. Why don't you want it. It is a piece of crap
20 you don't want. Someone else does. But we just
21 thought it was, you know, something funny that
22 people might get. People might laugh at a little.

23 Q. So just to clarify then, the word Crapple
24 is meant to refer to the product itself, right?

25 A. It can be.

1 Q. What else could it refer to?

2 A. Anything you don't want.

3 Q. Can you please turn to Exhibit 12.

4 A. I should say anything you want to get --
5 anything you no longer have a use for, right,
6 something that you may recycle would be Crapple. It
7 is kind of like crap. It has a whole host of
8 meanings. It doesn't just mean, you know, a def --
9 the product of a defecation. It has a lot of
10 meanings.

11 Q. And so one of those meanings could be a
12 used Apple product that someone wants to sell to
13 Crapple.com?

14 A. It could be a used phone of any kind,
15 right?

16 Q. And that could include an Apple phone?

17 A. Yeah. Why not. It includes any phone.

18 Q. Can you please turn to Exhibit 12. Is
19 this a depiction of the Forum page from Crapple.com?

20 A. It appears to be, yes.

21 Q. What was the Forum page used for?

22 A. It wasn't used for anything. No one ever
23 used it.

24 Q. What was it intended to be used for?

25 A. People to talk about stuff like in any

1 whole row of non-Apple phones.

2 So in order to get to this point where you
3 see this stock photo that we didn't -- you know,
4 that's part of an unfinished website they have to
5 see photos of other phones in connection with the
6 Crapple mark. So you're sitting here trying to
7 cherry-pick photos out of a website that a user has
8 to navigate to and make a statement out of it. As I
9 said before, it's totally inaccurate, misleading,
10 and I'm sure that you know this.

11 Q. So this Forum page would be used for
12 consumers to come and comment on any given topic
13 including perhaps Apple's products?

14 A. I mean yes. But do you see any -- any
15 topics? There's only one. And there's not a single
16 mark there and there's not a single user who's
17 registered with the company, you know. And we have
18 not hired anyone or endeavored to put any content up
19 or any topics for forums or comments of our own for
20 forums. So really what you're seeing on this one
21 date that you chose to screenshot this site is
22 something that Rahman, the developer, put in place
23 for us to later step in and customize.

24 Q. Can you please turn to Exhibit 13.

25 A. Yes. I'm there.

1 Q. Is this the How It Works page from
2 Crapple.com?

3 A. It appears to be, yes.

4 Q. So basically it explains that someone can
5 come to your website, they look at how much Crapple
6 would purchase a consumer electronic product for,
7 and then they can sign up to send it and sell it to
8 Crapple?

9 A. Well, yeah. It says first look at the
10 home page, right, because the very first page with a
11 whole host of different phones, you know, including
12 the first line of all non-Apple phones, right? And
13 after they do that click on the price of the piece
14 of Crapple, which is what we jokingly referred to
15 as, you know, our merchandise. And then register
16 with us and sign in.

17 If you're a Crapple vet, this was an idea
18 we had people who sell multiple products with us, we
19 were going to call them Crapple vets, right?
20 They're veterans so to speak with our site. And,
21 you know, we were going to give special I guess
22 standing to them or benefits. We really hadn't
23 gotten to that point. But yeah, that's about how it
24 works.

25 Q. Please turn to Exhibit 14. Is this a

1 depiction of the Sell Crap section from the
2 Crapple.com website?

3 A. It appears to be, yes.

4 Q. The second paragraph starts with why did
5 you buy that crappy iPhone anyway; is that right?

6 A. What does the second say? Can you read
7 the second sentence.

8 Q. How about you read that whole paragraph.

9 A. Why did you buy crappy iPhone anyway?
10 Android is open source, doesn't sensor app
11 developers and is in general a superior platform.
12 So what are you waiting for? Ditch that pitch of
13 Crapple, get paid and upgrade yourself. So we
14 reference another phone in the same paragraph as
15 well.

16 Q. It sounds like you're explaining that
17 iPhones are crappy and that someone should have
18 bought an Android phone because it is better, it is
19 better because it is open source and it doesn't
20 sensor; is that right?

21 A. What does the first paragraph say? I
22 think, you know, the doctrine of completeness. You
23 have to read the entire document, the entire
24 statement. And the first paragraph says: What do
25 you call a smartphone you no longer use? So it

1 really doesn't matter if someone is using an iPhone
2 or an Android. It's clear in the first paragraph
3 that we're talking about smartphones. So the second
4 paragraph is just an example. We could have used
5 any phone. It didn't have to be Apple.

6 Q. Why did you choose Apple as the example?

7 A. It was the number one selling phone at the
8 time. And so we wanted people to trade in the
9 number one selling phone at the time because there
10 were more of them than any other phone.

11 MS. JONES: It is 12:43. We've been going
12 about two hours since our last break. Can we
13 take about a 20-minute break and come back
14 online at 1:05.

15 (A recess was had.)

16 Q. (By Ms. Jones) How was the Crapple word
17 mark selected?

18 A. I'm sorry, are we on record?

19 Q. Yes, we are.

20 A. At the beginning of the last -- of the
21 last session getting back to the interval you asked
22 me if there was anything I'd like to go back over.
23 And you didn't ask me this time but there is. I'd
24 like to go back if we could briefly to the Urban
25 Dictionary. I believe it is Exhibit 15.

1 Q. So my question had been in the first
2 session is there anything about your testimony that
3 you would like to change or clarify. And so I trust
4 there's something you'd like to change or clarify
5 with respect to your testimony regarding Urban
6 Dictionary, Exhibit No. 15?

7 A. Yes. Just something I'd like to clarify
8 regarding this exhibit. You guys, you know, chose
9 this exhibit and then only had me read, you know,
10 the second entry in an online slang dictionary.
11 That's totally incomplete. You should have had me
12 read all entries including number six which says:
13 Crapple. A crapple is the result of a sliced apple
14 being left out for an extended period of time. The
15 crapple is characterized but not limited to the dark
16 yellowish brown inside. That's all.

17 Q. How was the Crapple word mark selected?

18 A. Well, it was, you know, as discussed
19 earlier, between Milton and myself, this was
20 primarily our idea. We came to a decision that
21 Crapple was a good word to select for the company.

22 Q. Why was it a good word to select for the
23 company?

24 A. Well, you know, we wanted something that
25 kind of -- that discussed the merchandise we were

1 buying and people's perception of it, right? And
2 that was kind of a joke, maybe poke fun at it. So,
3 you know, there's two parts to it like why was crap
4 a good selection you might be asking. Well, we
5 thought that, you know, there's crap and shit but
6 shit wasn't very friendly. And of course we could
7 have modified it so that it was maybe -- you know,
8 any word we selected we were going to modify because
9 this day and age, you know, pretty much any -- most
10 nouns you can think of to name a company after that
11 are recognizable are taken or are too generic. So
12 we thought there were issues there.

13 So, you know, we started playing around
14 with the issue of crap or shit. You know, as I
15 think a lot of companies do, there's always a kind
16 of inside joke or a back story as to how the name is
17 selected, right? I'm sure -- in fact there is a
18 back story to how the name Apple was selected which
19 we won't get into unless you ask.

20 But so we had this kind of joke ongoing
21 between my brother Zachary Kelman and myself and
22 even Milt to some extent that we would add the
23 letter L at the end of a lot of words. We would be
24 out drinking, hey, give me another drinkle. Because
25 my brother had this phone that was like broken and

1 it would add an L. Every time he sent a text
2 message, right, at the end of every word it would
3 add an extra L. I'm not sure why but it was this
4 funny defect. And so all these texts I'd get from
5 him it had an L at the end of them and it was kind
6 of funny.

7 So, you know, we'd joke about it in
8 person. And we kind of realized and, you know, this
9 is the exact type of thing that people are going to
10 sell to a company like this. Maybe it is, you know,
11 he bought the phone I believe if I recall correctly
12 from Ninja Entertainment and it had this defect
13 because it was a used phone.

14 And so we, you know, we said well,
15 shittle, shittle is an idea, you know, for what we
16 would call it. But it just didn't sound right. And
17 so we just said well, what about Crapple. And that
18 was kind of how we, you know, among a whole host of
19 other names we just kind of liked how it sounded and
20 went with it.

21 Q. What type of phone was your brother using
22 when it added the letter L to random words?

23 A. I don't recall. But it was not -- I do
24 know for a fact that it was not an Apple phone. It
25 was some kind of -- it was some kind of Android

1 phone.

2 Q. Is Crapple a combination of the terms crap.
3 and Apple?

4 A. No. At least it was not our intent to
5 combine the two.

6 Q. Could the term Crapple be perceived as a
7 combination of the terms crap and Apple?

8 A. You guys perceive it that way.

9 Q. Could others perceive it that way?

10 A. I mean you're trying to convince them. So
11 maybe.

12 Q. In your opinion does the term Crapple
13 sound similar to the term Apple?

14 A. It sounds similar to the term Snapple as
15 well.

16 Q. So the term Crapple sounds similar to the
17 term Apple?

18 A. You know, they both end the same way.
19 I'll say that much.

20 Q. Meaning the term Crapple includes the term
21 Apple?

22 A. In the same sense that Snapple does, yeah.
23 I would say it is actually closer to Snapple or, you
24 know, something along those lines. But there's lots
25 of things it sounds similar to.

1 Q. Has anyone ever asked you what the term
2 Crapple means?

3 A. No. Most people I talk to about it I'm
4 guessing is to assume that it is a brand name.

5 Q. Has anyone ever asked Ninja Entertainment
6 if the Crapple name has anything to do with Apple or
7 its products?

8 A. I mean that's kind of a broad thing. I
9 mean it clearly does since we sell used phones that
10 were manufactured by Apple and it was well within
11 our constitutional right to sell a used item. So in
12 that respect yes, people have inquired about that.
13 But no one to my knowledge, and I have discussed
14 this, no one has ever thought that there is any
15 association between the name Crapple and Apple,
16 sponsored by Apple or anything.

17 Q. So what were the nature of some of the
18 questions you got about the Crapple name having to
19 do with Apple or its products?

20 A. I don't recall specific questions. But no
21 one has ever, ever been under the misimpression
22 that, you know, Crapple was sponsored by Apple.
23 Like no one has ever asked us how oh, are you guys
24 sponsored by Apple. No one has ever asked anything
25 remotely like that.

1 A. By mark you mean when was it registered --
2 I'm sorry, was applied to be registered?

3 Q. No. I mean the Crapple mark which was the
4 subject of the application, when was it first used?

5 A. To the best of my knowledge the first and
6 only use it has ever been put to is the website.
7 I'm not sure -- I can't give you an exact date when
8 it was up and down. But that's the only use it has
9 been put to by us.

10 Q. Did you ever intend to use the Crapple
11 mark on products?

12 A. That was not -- you know, somewhere down
13 the road, you know, businesses have a long-term plan
14 and I won't rule it out. But it wasn't really like
15 our intent to stamp everything with Crapple.
16 Crapple was a service.

17 Q. Why did you apply for a trademark
18 application in a product class if it was intended to
19 be a service?

20 A. Like I said, somewhere down the road we
21 might want to do it. One of the things we thought
22 of too were headphones. And we just wanted to have
23 all orange headphones, right, and then people could
24 buy them. Like, you know, when you have a company,
25 you know, you start somewhere and we were going to

1 start with a service. And it picked up. You know,
2 we have a name. We have a name that matters. And
3 so we might want to trademark our name and put it on
4 headphones or something small like that. So that
5 was kind of the idea behind it.

6 Q. Other than headphones were there ever any
7 products that you intended to use the Crapple mark
8 on?

9 A. To use them on? You mean like put it
10 on -- I mean I don't know. I don't think so. We
11 had no -- you know, we just -- not really. We also
12 hadn't decided fully -- and this may answer some
13 questions -- as to whether we should at some point
14 in the future like if Crapple became very profit --
15 like a very popular site, right, we might be able to
16 then sell products as well from the Crapple site.

17 We hadn't really gotten all that way. But
18 we felt that if we were selling products from the
19 Crapple website that they might somehow be labeled
20 Crapple products. I don't know. Like we weren't
21 going to slap our label on it or anything, but they
22 somehow be labeled that. And we wanted to provide,
23 you know, in the event that that happened too.

24 Q. You mentioned that your brother -- is your
25 brother Zachary Kelman?

1 A. Yes.

2 Q. And your brother had the phone that added
3 the L to the end of many different words?

4 A. Yeah.

5 Q. Other than that fact did your brother have
6 any involvement in the selection of the Crapple
7 mark?

8 A. Not really. I mean I talk about a lot of
9 stuff with him. He's my brother. You know, we're
10 very close. He wasn't a part of the company. He
11 didn't help register it. You know, we may have
12 kicked around some ideas with him. But that's about
13 as far as it went. We talked so much that I'm not
14 even really sure offhand what the scope of those
15 discussions may have covered.

16 Q. Do you recall specifically discussing any
17 alternative marks with Zachary?

18 A. Shittle, junkle.

19 Q. What was that?

20 A. Junkle.

21 Q. Can you spell that.

22 A. It could have been J-U-N-K-L-E. I mean I
23 think that's one. There may have been a few others.
24 I can't really think of anything else off my head --
25 off the top of my head.

1 buy and sell on the Crapple website?

2 A. Yes.

3 Q. So why didn't you file an application to
4 register the Crapple mark for a servicemark class?

5 A. Perhaps that was a mistake. I don't know.

6 Q. Did Ninja Entertainment have an intent to
7 use the Crapple mark on each one of these goods or
8 was the intent only to sell them or purchase them?

9 A. We were going to use it on headphones as I
10 said before. And then we wanted to have the website
11 that bought and sold the other things and they to
12 some extent may be labeled as, you know, a Crapple.
13 I don't know. Someone may call it what they want to
14 call it. It may have an association with our site.

15 Q. I don't understand. Can you elaborate.

16 A. As a secondhand item someone might say oh,
17 yeah, I bought this phone through Crapple. It is a
18 Crapple. They might refer to the secondhand item as
19 something along those lines, right? Like if it is a
20 broken phone for example, we fix that phone. What
21 did we fix that phone with. You know, it could be
22 fixed with products that weren't made by the
23 original manufacturer. So what do you then refer to
24 that phone as. We have just added something to a
25 product and created in a sense a product that

1 functions the way it was intentionally to do but has
2 nonstock parts inside of it.

3 And the same way, you know, like for
4 example you have a Mustang, right? You may buy a
5 Saleen Mustang. A Saleen is a trademark and they --
6 for Mustangs and they soup them up. So in the event
7 that a phone is repaired with nonstock parts or
8 maybe even parts that are superior to ones that were
9 put in to begin with, say a better battery, they
10 might be different and you might consider the phone
11 something different than it was originally
12 manufactured as.

13 Q. Other than the Crapple trademark
14 application, has Ninja Entertainment ever filed
15 other applications?

16 A. I don't believe so.

17 Q. Have you ever filed a trademark
18 application other than for the mark Crapple?

19 A. Not -- I have not on my own behalf no or
20 on behalf of a company that I own.

21 Q. Why did you choose Ninja Entertainment
22 Holdings as the owner of the mark?

23 A. I don't recall why. We figured we could
24 assign it later to someone else or to another
25 company we owned. In fact I believe that's what we

1 have done. I could be mistaken. But we have -- I
2 believe we assigned or at least applied to have it
3 assigned to Ninja Laboratories. But I could be
4 mistaken. Maybe something happened with that.

5 Q. Are there any documents related to that
6 assignment?

7 A. I'm not sure. I don't believe so. I
8 think if there were, they were filed online with the
9 website.

10 Q. Who would have filed those documents?

11 A. I would have filed them.

12 Q. Did you file documents to assign the
13 Crapple mark?

14 A. I believe I did, yes. I could be
15 mistaken. Because the document you're showing me
16 says Ninja Entertainment is still the owner. But I
17 recall either taking steps or planning or something
18 to assign the mark at some point in 2012.

19 Q. Why would you assign the mark from Ninja
20 Entertainment Holdings, LLC to Ninja Labs?

21 A. It wasn't really in the nature of
22 Holdings' business. You know, we -- throughout
23 representing Ninja and being with them we created
24 Labs as kind of like a company to -- you know, the
25 name kind of explains it, to be an incubator for new

1 ideas and experiment with things. And this was
2 something we were going to experiment with and see
3 if it worked and put some time and money into it.
4 And so it made more sense to be there instead as
5 opposed to in the Holding company.

6 Q. Did Ninja Labs exist at the time you filed
7 the application?

8 A. I don't recall. I really don't recall. I
9 don't recall when we created it.

10 Q. So to the best of your knowledge the
11 Crapple mark is currently owned by Ninja Labs?

12 A. Yeah.

13 Q. Has Ninja Labs made any use of the Crapple
14 mark?

15 A. No. The only use of the mark you have --
16 you know, is what we have discussed today.

17 Q. Was the assignment of the mark prior to
18 the use of the mark on the website?

19 A. I don't recall. It may have been right in
20 the middle of it we applied for it or something. I
21 don't really recall when it happened. I do recall
22 applying for it but I don't recall when. I don't
23 recall checking to see if it went through. I just
24 recall applying for it. And at some point during
25 this whole proceeding I just said to hell with doing

1 anymore work on this until, you know, you guys --
2 until we settle the whole thing because time is
3 money and I don't want to waste it.

4 Q. What do you think you filed with the PTO
5 for the assignment?

6 A. There was a button regarding assignments
7 and I kind of followed that through and sought to --
8 you know, I executed whatever documents they had on
9 there to assign it to another entity under the name
10 of Ninja Entertainment Labs, LLC.

11 Q. Why did you choose to apply for the
12 Crapple wordmark as opposed to the wordmark and logo
13 or the wordmark in a stylized form?

14 A. We hadn't really -- we hadn't really
15 decided on what the logo would be yet. You know, I
16 felt like that took more time to establish. And it
17 was also more of a financial investment to register
18 a separate logo and, you know, we hadn't hired a
19 graphic designer for that. I just came up with my
20 little logo that we discussed earlier which was
21 clearly the work of an amateur. And we weren't
22 ready to go through all those steps. We felt this
23 was the cheapest most cost effective way to get
24 started.

25 Q. Please turn to Exhibit 17. Do you

1 recognize these Opposer's First Set of
2 Interrogatories to Applicant which were served on
3 Ninja on July 30th, 2012?

4 A. Wait. Can you explain what this is again.
5 I'm sorry.

6 Q. These are Apple's first set of
7 interrogatories that were served on Ninja on
8 July 30th, 2012.

9 A. Okay.

10 Q. Do you recognize them?

11 A. I mean they look like any other set of
12 interrogatories that we served, you know, with the
13 word Apple thrown in after opposer.

14 Q. Did you discuss the responses to the
15 interrogatories with anyone at Ninja Entertainment?

16 A. Can I read these real quick again
17 actually?

18 Q. Sure.

19 A. I might have. I really can't recall right
20 now.

21 Q. Who did you discuss them with?

22 A. If I had discussed them, they would have
23 been discussed with Milton Barr.

24 Q. Did you discuss them with anyone other
25 than Milton?

1 A. To the best of my knowledge they didn't
2 concern anyone else. So need to know basis, I
3 wouldn't have discussed them with them.

4 Q. So you didn't discuss the interrogatories
5 with any other employees of Ninja Entertainment?

6 A. No, I don't believe so.

7 Q. Please turn to Exhibit 18 which are
8 Apple's first set of document requests to Ninja
9 Entertainment. Do you recognize these document
10 requests?

11 A. It looks a lot like the last document you
12 showed me.

13 Q. Did you review the document requests when
14 you received them?

15 A. I probably did.

16 Q. Did you discuss the document requests with
17 anyone?

18 A. Milt. I did what I felt I had to to
19 comply with them, yes.

20 Q. Did you undertake a search for responsive
21 documents?

22 A. Yes.

23 Q. When did you do that?

24 A. Sometime after I received the request.

25 Q. What did you do to search for documents?

1 A. Dug through e-mails; performed searches in
2 e-mail documents for relevant words, i.e. Crapple;
3 you know, looked at written stuff I had lying
4 around; discussed with Milt hey, where do you think
5 we might find our old, you know, discussions about
6 this, that type of thing. I didn't find anything.
7 I didn't find anything that I felt was relevant to
8 it.

9 Q. What did you find that you think was
10 irrelevant?

11 A. Attorney-client privileged documents.

12 Q. To date we have not received a privilege
13 log. Can you produce a privilege log identifying
14 those documents?

15 A. Could you show me the exact request for
16 the privilege log that you sent me. Is it in one of
17 these exhibits? I just want to read it real quick
18 to make sure.

19 Q. If you turn to Exhibit 20 you'll see this
20 is a letter sent to you --

21 A. Okay.

22 Q. -- from me regarding Ninja's deficient
23 discovery responses. And if you take a look at
24 page 4, the penultimate paragraph, there's a request
25 for a privilege log made on February 27th this year.

1 We have yet to receive a privilege log. Could you
2 produce one in the next week?

3 A. Where does it say that?

4 Q. The second to the last paragraph is the
5 request for a privilege log.

6 A. Well, after this point in time you guys
7 never really asked me again for it. I just kind
8 of -- you know, there's a lot of stuff in there.

9 Q. So I'm asking you again could you produce
10 a privilege log within the next week?

11 A. Could you explain to me what exactly you
12 want in a privilege log. Like Milt and I don't --
13 we don't have written records of everything we
14 discussed. We don't have, you know, times and dates
15 where we discussed things to put in this log. We
16 don't even have any documents.

17 Q. You just told me that there were documents
18 that exist that were subject to the attorney-client
19 private. The Federal Rules of Civil Procedure call
20 for you to identify those documents in a privilege
21 log. We're again asking you to produce a privilege
22 log to comply with the rules.

23 A. I'm sorry. Bear with me. It's almost
24 2:00 in the morning my time. We've been at this a
25 while. To the best of my knowledge there are no

1 documents of that nature. And I believe the letter
2 says, you know, and I -- you know, I don't want to
3 misquote myself and the more accurate statement I
4 gave in the written correspondence. To the extent
5 Crapple in association with Apple is mentioned is
6 the subject -- so to the extent it is mentioned, it
7 doesn't even say it is mentioned, we don't mention
8 whether there are such documents or not. And I
9 don't recall offhand whether we have any such
10 documents or not.

11 I have explained before that Milt and I
12 discussed things verbally and we don't have such
13 things in existence. So I'll go and review these
14 documents again for anything -- for any documents
15 that may or may -- you know, that may reference
16 Apple. And if I have an attorney-client privilege
17 reason to withhold them, I'm give you a privilege
18 log based on them. But I'm not sure offhand if we
19 even have any of those documents. I just don't
20 recall.

21 Q. I appreciate your undertaking that search
22 and letting us know if there are such documents and
23 producing a privilege log in the next week.

24 A. Okay.

25 Q. Can you please turn to Exhibit 19.

1 A. Okay.

2 Q. Are these Ninja's responses to Apple's
3 discovery requests?

4 A. It appears to be, yes.

5 Q. Did you prepare the responses?

6 A. I did.

7 Q. Did anyone assist you in preparing the
8 responses?

9 A. I discussed with Milt what we were going
10 to talk about.

11 Q. Did you verify that the responses were
12 true and correct?

13 A. Yes.

14 Q. You have yet to serve a verification of
15 your interrogatories pursuant to the rule. Could
16 you also produce that within the next week?

17 A. Sure.

18 Q. Are these responses still complete and
19 correct today?

20 A. To the best of my knowledge yes. But, you
21 know, I'd have to go through and read everything you
22 guys sent me and then read this -- my replies again
23 to give you an entirely accurate answer. Would you
24 like me to do that?

25 Q. No. That's okay. What e-mail accounts do

1 you use that might contain e-mails related to
2 Crapple?

3 A. DanielKelman@gmail.com.

4 Q. Are there any others?

5 A. No.

6 Q. And you searched your
7 DanielKelman@gmail.com for responsive documents?

8 A. Yes.

9 Q. Did you search only for correspondence
10 between you and Milton?

11 A. No.

12 Q. When did you conduct that search?

13 A. Sometime after you sent the request.

14 Q. What e-mail account does Milton Barr use
15 in connection with work on Crapple?

16 A. I don't know. I just -- I usually use the
17 same e-mail I do for every single correspondence,
18 MiltBarr, M-I-L-T, B-A-R-R, @aol.com.

19 Q. Did you instruct Mr. Barr to search his
20 e-mail account?

21 A. Yeah. Actually what we did was he just
22 let me -- you know, he searched it and then he gave
23 me the password and told me to go through and figure
24 it out because I'm a lawyer and I'm supposed to know
25 what's relevant and what's not. And so instead of

1 wading -- you know, he's also a very slow reader and
2 typer. So it was quicker for me to go through and
3 do a search too.

4 Q. Can you please turn to number 13 in
5 Exhibit 19. Request number 13 as reproduced --

6 A. Yeah.

7 Q. -- in your letter says: Describe in
8 detail each instance of which Applicant has actual
9 or hearsay knowledge, directly or indirectly, of any
10 communication, suggestion, or inquiry regarding an
11 association, connection, or affiliation between
12 Applicant, Applicant's Mark, or Applicant's Goods
13 and Services on the one hand and Opposer, Opposer's
14 Marks, or Opposer's Goods and Services on the other
15 hand, identify each Person involved in having
16 knowledge of each such inquiry or communication.
17 The response says: There are plenty. People
18 sometimes laugh or remark "that's funny" or
19 something to that effect.

20 Can you elaborate on your response here.

21 A. You know, Milt I guess had talked about it
22 with other people and, you know, sometimes would
23 remark that it was funny, you know, and maybe they
24 made the connection between Apple and Crapple. As
25 you said earlier, they do sound kind of similar.

1 And that was based on that.

2 Q. Can you please turn to Exhibit 22.

3 A. I'm looking at it.

4 Q. Is this Ninja's supplemental discovery
5 responses served on July 16th, 2013?

6 A. I don't know what that term you just used
7 refers to exactly. But you guys filed a Motion to
8 Compel after I gave you my responses. And so I
9 never -- we never replied to that motion in the
10 USPTO and they ruled in your favor presumably
11 because we never filed a reply. So this is what I
12 filed pursuant -- that's what I sent to you guys
13 pursuant to that ruling.

14 Q. Is there any aspect of these responses
15 that needs to be updated or supplemented since you
16 wrote them?

17 A. I'd have to go through and fully read your
18 motion and your request and then fully read this
19 document to give a response. Would you like me to
20 do that?

21 Q. Sure.

22 A. Can you direct me to the exhibit that is
23 your last response -- can you direct me to the
24 exhibit that this is in response to.

25 Q. I don't know what you were responding to.

1 Q. So turning back to the target customers of
2 Crapple, since you were purchasing Apple products
3 those customers would include people that have
4 purchased Apple products, correct?

5 A. When you refer to customers, are you
6 referring to people who are selling us phones or the
7 ultimate purchasers of the items that we buy through
8 the site Crapple?

9 Q. I'm talking about the people that would
10 sell you the phones through the Crapple website.

11 A. Oh, okay. Now that we have identified
12 that, can you restate your question.

13 Q. Sure. The consumers of the Crapple
14 service would include people would own or have
15 purchased Apple products, correct?

16 A. They could. They might not. But if no
17 one who owns those products sells them to us, then
18 we wouldn't have any. But they could.

19 Q. Has Ninja Entertainment ever received
20 complaints related to the resale of its consumer
21 electronic products?

22 A. Yeah.

23 Q. How frequently would you say it receives
24 complaints?

25 A. I don't know. I'm not sure.

1 Q. Who would know that information?

2 A. Milton Barr.

3 Q. What type of complaints has Ninja
4 Entertainment received about its consumer
5 electronics products?

6 A. Hey, you sold me a phone, you know, it
7 broke the next week, some stuff like that.

8 Q. How are these complaints processed or
9 addressed?

10 A. Usually what we try to do if it is
11 reasonable, right, like, you know, any store, if it
12 looks like the person used it, you know, and
13 tampered with it and did all these things, you know,
14 spilled water on it when there was no water damage
15 before, you know, we'd tell them look, you know, you
16 screwed this up. But if it was just a bad phone or
17 we did them wrong, we'd try to comp them a store
18 credit or, you know, something else, that type of
19 thing.

20 Q. Have there ever been any complaints about
21 the Crapple service?

22 A. No. Because there really hasn't been
23 service. No one has used it. No one has used it to
24 complain about it.

25 Q. Outside of the scope of this proceeding

1 comply with your obligation to undertake a search of
2 the documents which you had been previously asked to
3 do so.

4 No further questions. Thank you for your
5 time, Daniel. We'll send you that letter and be in
6 touch.

7 (Deposition concluded at 2:50 p.m.)

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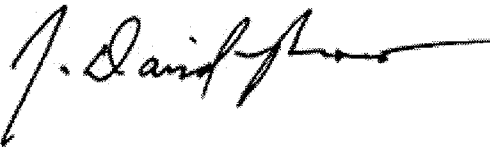
C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 204 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 16th day of August, 2013.



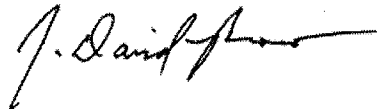
J. DAVID BROWN, CCR-B-1401

COURT REPORTER DISCLOSURE

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer, or the referral source for the deposition, with any party to the litigation, counsel to the parties or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Esquire Deposition Solutions. Esquire Deposition Solutions was contacted to provide court reporting services for the deposition. Esquire Deposition Solutions will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37(a) and (b).

Esquire Deposition Solutions has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. Esquire Deposition Solutions will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.



J. DAVID BROWN, CCR-B-1401

DEPOSITION ERRATA SHEET

Our Assignment No.: 391678
Case Caption: Apple, Inc. vs. Ninja Entertainment

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

DANIEL J. KELMAN, ESQ.

DEPOSITION ERRATA SHEET

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SIGNATURE:

DANIEL J. KELMAN, ESQ.

DATE:

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SIGNATURE:

DANIEL J. KELMAN, ESQ.

DATE:

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SIGNATURE:

DANIEL J. KELMAN, ESQ.

DATE:



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X	X	

**AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION
OF NINJA ENTERTAINMENT HOLDINGS, LLC**

To: Ninja Entertainment Holdings, LLC
c/o Daniel Kelman
1934 Josephine
Pittsburgh, PA 15203

Please take notice that commencing at **9:00 a.m. EDT** on **August 6, 2013** at 103 Xiàmén Street, Taipei City, Taiwan (R.O.C.), via videoconference and telephone, or at such other place as the parties may mutually agree, and continuing thereafter from day to day until completed, Opposer Apple Inc., through its counsel and pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and § 404.05 of the Trademark Trial and Appeal Board Manual of Procedure, will take the deposition of one or more officers, directors, or managing agents, or other persons who consent to testify on behalf of Applicant Ninja Entertainment Holdings, LLC, who shall

testify as to matters known or reasonably available to the organization with respect to the subjects listed in the attached Schedule A.

The deposition will take place pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer duly authorized to administer oaths and before a court reporter authorized by law to take depositions, and may be videotaped.

Dated: July 31, 2013

KILPATRICK TOWNSEND & STOCKTON LLP

By: Allison Scott Roach

Joseph Petersen
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8700
Facsimile: (212) 775-8800

Alicia Grahm Jones
Allison Scott Roach
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

Attorneys for Opposer Apple Inc.

SCHEDULE A

DEFINITIONS

- A. “Opposer” refers to Apple Inc.
- B. “Opposer’s Marks” shall refer individually and collectively to Opposer’s family of APPLE-based word marks and its Apple Logo including but not limited to the marks underlying the registrations in Paragraph 11 of Opposer’s April 17, 2012 Notice of Opposition.
- C. “Opposer’s Goods and Services” shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Opposer’s Marks, including but not limited to the goods and services covered by the registrations in Paragraph 11 of Opposer’s April 17, 2012 Notice of Opposition.
- D. “Applicant” refers to Ninja Entertainment Holdings, LLC, each of its predecessors, successors, parents, divisions, affiliates, or wholly-owned or partially-owned subsidiaries, and each of their principals, officers, directors, employees, representatives or agents.
- E. “Applicant’s Mark” means the mark CRAPPLE that is the subject of Application Serial No. 85/379,097.
- F. “Applicant’s Goods and Services” shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Applicant’s Mark.
- G. “Applicant’s Website” means the website at <http://www.crapple.com> and any other website, including but not limited to Facebook.com and Twitter.com accounts/web pages, belonging to or in the control of the Applicant and which use the Applicant’s Mark.

TOPICS

1. Applicant's corporate structure and history as it relates to adoption and use of Applicant's Mark.
2. Any applications filed by or on behalf of Applicant to register any name, mark, or designation which consists of or incorporates the term APPLE or an apple design, including but not limited to U.S. Trademark Application Serial No. 85/379,097.
3. All circumstances concerning the selection, adoption, use, and intended use of Applicant's Mark, including but not limited to any other names or marks that were considered; how and why Applicant's Mark was selected; all steps taken by Applicant to determine whether Applicant's Mark as available for use and registration prior to adoption; when, where, and how Applicant's Mark is used and/or intended to be used.
4. When and how Applicant first became aware of Opposer and Opposer's Marks.
5. Applicant's knowledge of Opposer's Goods and Services.
6. All goods or services for which Applicant has used or intends to use Applicant's Mark, including but not limited to Applicant's Goods and Services.
7. All licenses, assignments, or other agreements concerning Applicant's Mark.
8. Business, franchise, or marketing plans concerning any actual and/or planned use of Applicant's Mark.
9. The channels of trade through which Applicant distributes, has distributed, or intends to distribute, any goods or services under or in connection with Applicant's Mark, including but not limited to the internet, sales agents, dealerships, distributors, or other outlets through which any goods or services are, have been or will be sold.

10. Applicant's typical or target customers of goods or services sold under Applicant's Mark.
11. The distribution and sale of goods and services under Applicant's Mark, including the revenues and profits or losses from such sales or otherwise associated with use of Applicant's Mark.
12. Advertising, promotion, marketing of goods or services sold or to be sold under Applicant's Mark or otherwise featuring Applicant's Mark.
13. Applicant's expenditures for each advertising or promotional medium used to promote Applicant's Goods and Services.
14. The contents of Applicant's Website from the first date of its operation to the present.
15. All instances of which Applicant has actual or hearsay knowledge, directly or indirectly, of any communication, suggestion, or inquiry concerning an association, connection, or affiliation between Applicant, Applicant's Mark, or Applicant's Goods and Services, on the one hand, and Opposer, Opposer's Marks, or Opposer's Goods and Services, on the other hand.
16. All instances of which Applicant has actual or hearsay knowledge of any inquiry, complaint, or other communication concerning Applicant's business or any other inquiry, complaint, or other communication by any person concerning the qualities, advantages, or lack of quality of Applicant's Goods and Services.
17. Any conversations or other communications Applicant, including any of its representatives, have had with any third party concerning Opposer and the claims made in the instant matter.

18. Any public opinion poll, study, survey, market research, or other analysis conducted or caused or proposed to be conducted by or for Applicant with respect to Applicant's Mark.
19. Applicant's Answer to Opposer's Notice of Opposition, including all allegations and defenses therein.
20. Applicant's Initial Disclosures.
21. Applicant's responses to the Interrogatories and Requests for Production of Documents and Things served by Opposer in this matter.
22. Efforts to locate, collect, and produce documents responsive to the Requests for Production of Documents and Things served by Opposer in this matter.
23. Applicant's document and email retention policies and practices.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X	:	

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION OF NINJA ENTERTAINMENT HOLDINGS, LLC was served on counsel for Applicant by depositing a true and correct copy in the first class mail, postage pre-paid, addressed as shown below, with a courtesy copy emailed to danielkelman@gmail.com.

Daniel Kelman
1934 Josephine Street
Pittsburgh, PA 15203

Dated: July 31, 2013


Allison Scott Roach

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
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v.	:	
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NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
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Applicant.	:	
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AMENDED NOTICE OF DEPOSITION OF DANIEL KELMAN

To: Mr. Daniel Kelman
1934 Josephine Street
Pittsburgh, PA 15203

Please take notice that commencing at **9:00 a.m. EDT** on **August 6, 2013** at 103 Xiàmén Street, Taipei City, Taiwan (R.O.C.), via videoconference and telephone, or at such other place as the parties may mutually agree, and continuing thereafter from day to day until completed, Opposer Apple Inc., through its counsel, will take the deposition upon oral examination of Daniel Kelman, Principal and counsel of record, Ninja Entertainment Holdings, LLC, for purposes of discovery, use at trial, and any other purpose in accordance with the Federal Rules of Civil Procedure and Evidence.

The deposition will take place pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer duly authorized to administer oaths and before a court reporter authorized by law to take depositions, and may be videotaped.

Dated: July 31, 2013

KILPATRICK TOWNSEND & STOCKTON LLP

By: Allison Scott Roach

Joseph Petersen
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 775-8700
Facsimile: (212) 775-8800

Alicia Grahm Jones
Allison Scott Roach
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Telephone: (404) 815-6500
Facsimile: (404) 815-6555

Attorneys for Opposer Apple Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**
For the mark: **CRAPPLE**
Filed: July 22, 2011
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APPLE INC.,	:	
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NINJA ENTERTAINMENT	:	
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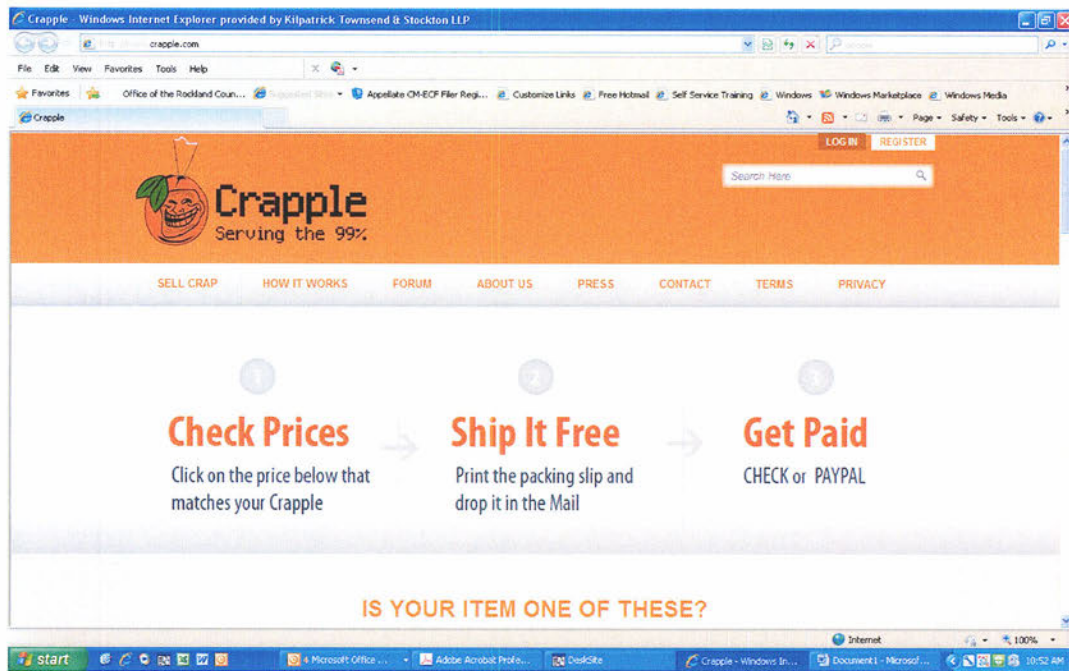
CERTIFICATE OF SERVICE

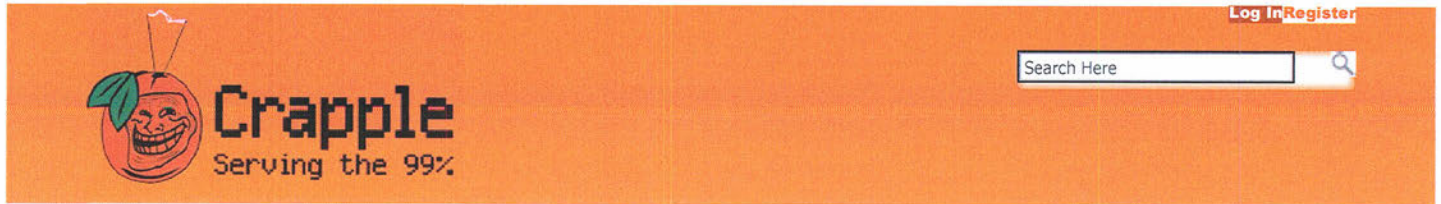
This is to certify that a copy of the foregoing AMENDED NOTICE OF DEPOSITION OF DANIEL KELMAN was served on Daniel Kelman, counsel for Applicant, by depositing a true and correct copy in the first class mail, postage pre-paid, addressed as shown below, with a courtesy copy emailed to danielkelman@gmail.com.

Daniel Kelman
1934 Josephine Street
Pittsburgh, PA 15203

Dated: July 31, 2013


Allison Scott Roach





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Check |

Click on the picture
that matches your item

Is your item one of these?

Most model numbers are located near the battery or on the back of your device.



Motorola Droid 4

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Motorola Droid
Razr

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Samsung
Galaxy Note

[SELL IT NOW](#)



Samsung Epic
Touch

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Samsung
Galaxy Nexus

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New : \$242
Used : \$176
Broken : \$30



Apple iPad 2 –
WiFi + 3G
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SELL IT NOW

New : \$410
Used :
Broken : \$180

New : \$230
Used : \$167
Broken : \$30



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(AT&T only)
32GB

SELL IT NOW

New : \$345
Used : \$325
Broken : \$165

New : \$346
Used : \$254
Broken : \$50



Apple iPad 2 –
WiFi + 3G
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16GB

SELL IT NOW

New : \$330
Used : \$310
Broken : \$190

New : \$223
Used : \$83
Broken : \$50



Apple iPad 2
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64GB

SELL IT NOW

New : \$380
Used : \$360
Broken : \$170

New : \$223
Used : \$162
Broken : \$50



Apple iPad 2
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(Verizon only)
32GB

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New : \$370
Used : \$360
Broken : \$200



Apple iPad 2
WiFi + 3G
(Verizon only)
16GB

SELL IT NOW

New : \$330
Used : \$310
Broken : \$190



Apple iPad 2 –
64GB

SELL IT NOW

New : \$370
Used : \$350
Broken : \$190



Apple iPad 2 –
32GB

SELL IT NOW

New : \$305
Used : \$285
Broken : \$165



Apple iPad 2 –
16GB

SELL IT NOW
















New : \$245
Used : \$225
Broken : \$145











Apple iPad 1 –
64GB

SELL IT NOW

New : \$205
Used : \$185
Broken : \$100

 Apple iPad 1 – 32GB SELL IT NOW New : \$190 Used : \$170 Broken : \$105	 Apple iPad 1 – 16GB SELL IT NOW New : Used : \$170 Broken : \$95	 Apple iPhone 4S (Verizon only) 64GB SELL IT NOW New : \$371 Used : \$313 Broken : \$90	 Apple iPhone 4S (Verizon only) 32GB SELL IT NOW New : \$328 Used : \$276 Broken : \$90	 Apple iPhone 4S (Verizon only) 16GB SELL IT NOW New : \$279 Used : \$234 Broken : \$90
 Apple iPhone 4S (Sprint only) 64GB SELL IT NOW New : \$371 Used : \$313 Broken : \$90	 Apple iPhone 4S (Sprint only) 32GB SELL IT NOW New : \$328 Used : \$276 Broken : \$90	 Apple iPhone 4S (Sprint only) 16GB SELL IT NOW New : \$279 Used : \$234 Broken : \$90	 Apple iPhone 4S (AT&T only) 64GB SELL IT NOW New : \$395 Used : \$333 Broken : \$90	 Apple iPhone 4S (AT&T only) 32GB SELL IT NOW New : \$346 Used : \$291 Broken : \$90
 Apple iPhone 4S (AT&T only) 16GB SELL IT NOW New : \$297 Used : \$249 Broken : \$90	 Apple iPhone 4 (Verizon only) 32GB SELL IT NOW New : \$177 Used : \$147 Broken : \$50	 Apple iPhone 4 (Verizon only) 16GB SELL IT NOW New : \$162 Used : \$132 Broken : \$50	 Apple iPhone 4 (Verizon only) 8GB SELL IT NOW New : \$100 Used : \$82 Broken : \$50	 Apple iPhone 4 (Sprint only) 32GB SELL IT NOW New : \$177 Used : \$147 Broken : \$50

 <p>Apple iPhone 4 (Sprint only) 16GB</p> <p>SELL IT NOW</p> <p>New : \$162 Used : \$132 Broken : \$50</p>	 <p>Apple iPhone 4 (Sprint only) 8GB</p> <p>SELL IT NOW</p> <p>New : \$100 Used : \$82 Broken : \$50</p>	 <p>Apple Iphone 4 (ATT only) 32GB</p> <p>SELL IT NOW</p> <p>New : \$177 Used : \$152 Broken : \$65</p>	 <p>Apple Iphone 3G (ATT only) 8GB</p> <p>SELL IT NOW</p> <p>New : \$73 Used : \$46 Broken : \$15</p>	 <p>Apple Iphone 3G (ATT only) 16GB</p> <p>SELL IT NOW</p> <p>New : \$125 Used : \$95 Broken : \$15</p>
 <p>Apple Iphone 3G (ATT only) 32GB</p> <p>SELL IT NOW</p> <p>New : \$132 Used : \$102 Broken : \$15</p>				
 <p>Apple Iphone 4 (ATT only) 8GB</p> <p>SELL IT NOW</p> <p>New : \$100 Used : \$82 Broken : \$50</p>		 <p>Apple Iphone 4 (ATT only) 16GB</p> <p>SELL IT NOW</p> <p>New : \$165 Used : \$145 Broken : \$75</p>		

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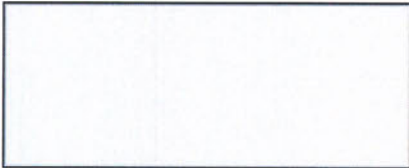
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Privacy

Crapple Privacy Policy

Please read the following to learn more about our privacy policy, the types of personal information we gather and the steps we take to safeguard it when you use the Web sites, applications and services provided by us (the "Services").

Crapple is provided by Crapple, LLC. and its affiliates ("Crapple," "we" or "us"). This policy covers how we treat personal information that we collect and use on or through the Services and other related websites where this policy is posted on the footer of the Web page.

You agree that this Privacy Policy is part of our Terms of Use and Terms of Sales Agreement, which you can review at <http://www.crapple.com/legal>. By accessing or using the Services, you agree to be bound by all of our terms and conditions.

Information Collection and Use

When you use the Services, you provide information to us. Crapple collects two types of information: (1) information that you provide to us that lets us know who you are ("Personally Identifiable Information") and (2) information that does not by itself identify a specific individual ("Non-personally Identifiable Information").

Personally Identifiable Information

You can browse the Services' Websites without telling Crapple who you are or revealing any personal information about yourself. However, when you transact with us (e.g., offer to sell a device) or register to open an account with Crapple, we ask for information about yourself, such as your name, email address, and zip code, which we collect and use as disclosed in this Privacy Policy. Once you submit information about yourself to us, you are not anonymous to us. We may also collect additional information about you when you engage in certain activities on the Services, such as: (a) provide transactional information when you sell, donate, offer to recycle, ship, or purchase an item ; (b) when you sign up for special offers; (c) when you visit the Services' Web pages or the pages of certain Crapple partners ; (d) when you interact with offers and advertisements; (e) when you contact us for help or customer support; (f) when you log into the Services with your account; (g) when you complete a survey; (h) when you post content or provide us with feedback; or (i) when you enter promotions or sweepstakes. Crapple might also receive information about you from other sources and add it to your account information. Providing information is purely optional on your part; however, not all features and services (such as, responding to your inquiries) would be available to you if you elect not to provide information. If you choose to provide us with personal information, you consent to the transfer and storage of that information by us.

Non-Personally Identifiable Information

We automatically receive and collect Non-personally Identifiable Information on our server logs from your browser, including your IP address, the Uniform Resource Locator ("URL") that you just came from, which URL you next go to, browser type, browser language, date and time of your query, Crapple cookie information, and the pages you request. This information is compiled and analyzed on both a personal and an aggregated basis. We may use third-party analytics services to collect, monitor and analyze the information collected as described above.

Use of Information

We primarily will use Personally Identifiable Information for the following purposes: (a) to provide the Services to you; (b) to customize the advertising and content you see ; (c) fulfill

any transactions, including, your requests for products and services ; (d) improve our services and offerings to you; (e) conduct research ; (f) provide you with support; (g) provide you with updates and notices about the Services, our Privacy Policy and terms and conditions; (h) contact you under certain circumstances; (i) provide you with offers from us, our affiliates and from third parties that may be of interest to you, and (j) provide anonymous reporting for internal and external clients. In addition, Crapple will use your email address to contact you under the following circumstances: to respond to your support questions, to notify you of material changes to our policies or website, to request your participation in user surveys, and to deliver products, services and marketing communications that you request.

We will use Non-personally Identifiable Information to diagnose problems with our servers and software, to administer the Services, and to gather demographic information. Our third-party advertising networks and servers will also provide us reports that will tell us how many ads were presented and clicked upon on Crapple in a manner that does not identify personally any individual.

Cookies

Crapple may set and access Crapple cookies on your computer. Upon your first visit to the Services, a cookie is sent to your computer that uniquely identifies your browser. A "cookie" is a small file containing a string of characters that is sent to your computer and stored on your hard drive when you visit a website; many major Web services use them to provide useful features for their users. Each web site can send its own cookie to your browser. Most browsers are initially set up to accept cookies. You can reset your browser to refuse all cookies or to indicate when a cookie is being sent; however if you reject cookies, you will not be able to sign in to the Services or take full advantage of our Services. Crapple uses cookies for the following general purposes: (a) to track your preferences, such as the address or local zip code you enter; (b) to access your information when you sign in so we can provide you with your personalized content ; (c) to display the most appropriate advertisements, based on your interests and activity on our web site; and (d) and to help us analyze and estimate our traffic and use of features on the Services.

We may also use "pixel tags," which are small graphic files that allow us to monitor the use of the Services. A pixel tag can collect information such as the IP address of the computer that downloaded the page on which the tag appears; the URL of the page on which the pixel tag appears; the time (and length of time) the page containing the pixel tag was viewed; the type of browser that retrieved the pixel tag; and the identification number of any cookie previously placed by that server on your computer. We may use pixel tags, either provided by us or by our third party advertisers and ad networks, to collect information about your visit, including the pages you view, the links you click and other actions taken in connection with our sites and Services and use them in combination with our cookies to provide offers and information of interest to you.

We also may allow certain analytic services and providers of applications used on the Services (e.g. sharing buttons) to collect Non-Personally Identifiable information by placing cookies on the Services that will track certain performance of our Services, such as, web traffic, click-throughs, etc., in order to assist us and our service providers in better understanding the interests of our users and to better serve those interests.

Advertising

We may use other companies under agreements with us to serve advertisements when you visit and use the Services. These companies may collect and use [Non-Personally Identifiable Information] (e.g., click stream information, browser type, time and date, subject of advertisements clicked or scrolled over) during your visits to the Services and other Web sites in order to provide advertisements about goods and services likely to be of greater interest to you. These companies typically use a cookie, a third party web beacon and/or pixel tags to collect this information. To learn more about this behavioral advertising practice in general and the options that you have, including your option or to opt-out of this type of advertising, you can visit www.networkadvertising.org. These cookies, web beacons and pixel tags do not collect any personal information from your computer, such as your e-mail address. Other companies' use of their cookies is subject to their own privacy policies, not this one.

Advertisers or other companies do not have access to Crapple's cookies.

Targeted Advertising By Crapple

In order to serve offers and advertisements that may be interest to our users, we may display targeted advertisements on the Services based on Personally Identifiable Information provided by our users, including zip code and profile. We do not provide this Personally Identifiable Information to our advertisers when you interact with such an advertisement. However, please note that the advertisers (including ad serving companies) may determine based on their own analysis that a user who interacts with an advertisement targeted by Crapple may fit into a certain demographical category; for example, an advertiser may determine that men ages 25-34 are interacting with a certain advertisement on Crapple from a particular geographic area. You acknowledge that any information collected by such advertisers or advertising networks – and any options that you have with the use of such information – would be handled in accordance with the disclosures provided above in the "Advertising" section.

Information Sharing and Disclosure

Crapple does not rent, sell, or share personal information about you with other people or nonaffiliated companies except to provide products or services you've requested, when we have your permission, or under the following circumstances:

We provide the information to trusted partners who work on behalf of or with Crapple under confidentiality agreements. These trusted partners include companies with which Crapple may operate co-branded websites or web-pages to expand their services using Crapple's Services. These trusted partners may use your personal information to provide services to you on our behalf, evaluate the effectiveness of the services, and to help Crapple communicate with you about offers from Crapple and our marketing partners. However, these companies do not have any independent right to share this information. We respond to subpoenas, court orders, or legal process, or to establish or exercise our legal rights or defend against legal claims.

We believe it is necessary to share information in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of Crapple's terms of use, or as otherwise required by

law. We may transfer information about you if Crapple is acquired by or merged with another company. In this event, Crapple will post a notice on its website before information about you is transferred and becomes subject to a different privacy policy.

The sites displayed as search results or linked to by the Services are developed by people over whom Crapple exercises no control. These other sites may place their own cookies on your computer, collect data or solicit personal information. Crapple may present links in a format that enables us to understand whether they have been followed. We use this information to understand and improve the quality of Crapple's search technology. For instance, this data helps us determine how often users are satisfied with the first result of a query and how often they proceed to later results.

Your Ability to Edit and Delete Your Account Information and Preferences

Registered users can edit their Crapple account information, including contact preferences, at any time from their "My Account" account management page which you can find at www.crapple.com/account/login. We may, from time to time, send you e-mail regarding our products and services and third party products and services that may be of interest to you. You will have the opportunity to opt out of any further mailings at any time; provided, however, that we reserve the right to send you certain communications relating to the Services, such as (a) communications related to fulfilling a transaction, (b) service announcements, (c) notices regarding Crapple's legal terms and this Privacy Policy; and (d) administrative messages, which are considered part of your Crapple account. You will not have the opportunity to opt-out of receiving such notices.

You can delete your Crapple registered account by requesting an account deletion via email to support@crapple.com. You must provide us with the email address of the registered account. After we have confirmed your request via email, we will remove access to your personal information from our user database.

Confidentiality and Security

We limit access to personal information about you to our employees and agents who we

believe reasonably need to come into contact with that information to provide products or services to you or in order to do their jobs. Your information is stored on our servers located in the United States. We treat data as an asset that must be protected and use many tools (encryption, passwords, physical security, etc.) to protect your personal information against unauthorized access and disclosure. However, third parties may unlawfully intercept or access transmissions or private communications, and other users may abuse or misuse your personal information that they collect from the site. Therefore, although we work very hard to protect your privacy, we do not promise, and you should not expect, that your personal information or private communications will always remain private. Because email and instant messaging are not recognized as secure communications, we request that you not send private information to us by email or instant messaging services.

Third Parties

This Privacy Policy only addresses the use and disclosure of information we collect from you. This policy does not apply to the practices of companies that Crapple does not own or control or to people that Crapple does not employ or manage. The Services may include applications, content and/or ads from third parties that may perform user activity tracking in addition to that described herein; Crapple accepts no responsibility for said activities. Crapple does not control the privacy policies of third parties, and you are subject to the privacy policies of those third parties where applicable. We encourage you to ask questions before you disclose your personal information to others. For more information about each such third party, please refer to the third party's privacy policy.

Changes to this Privacy Policy

We may amend this Privacy Policy at any time by posting the amended terms on this site. All amended terms automatically take effect 7 days after they are initially posted on the Services, unless that amendment states otherwise. In addition, we will notify you about significant changes in the way we treat personal information by sending a notice to the primary email address specified in your Crapple account or by placing a prominent notice on our site. If you do not agree to the changes, you may terminate your account by requesting an account

deletion via email to support@crapple.com. You must provide us with the email address of the registered account.

Crapple is intended for general audiences. Crapple does not collect or maintain information from those that Gazelle knows are under 13, and no part of the Crapple Services are targeted to attract anyone under 13.

California Users

If you are a California resident, in addition to the rights set forth above, you have the right to request information from us regarding the manner in which we share certain categories of your personal information with third parties, for the third parties' direct marketing purposes. California law provides that you have the right to submit a request to us at the designated address and receive the following information: the categories of information we disclosed to third parties for the third parties direct marketing purposes during the preceding calendar year, the names and addresses of third parties that received such information, and if the nature of a third party's business cannot be reasonably determined from the third party's name, examples of the products or services marketed.

You are entitled to receive a copy of this information in a standardized format and the information will not be specific to you individually. Our designated email address for such requests is privacy@crapple.com.

Request for Information

If you have questions, concerns or suggestions, please feel free to send an email to privacy@crapple.com.

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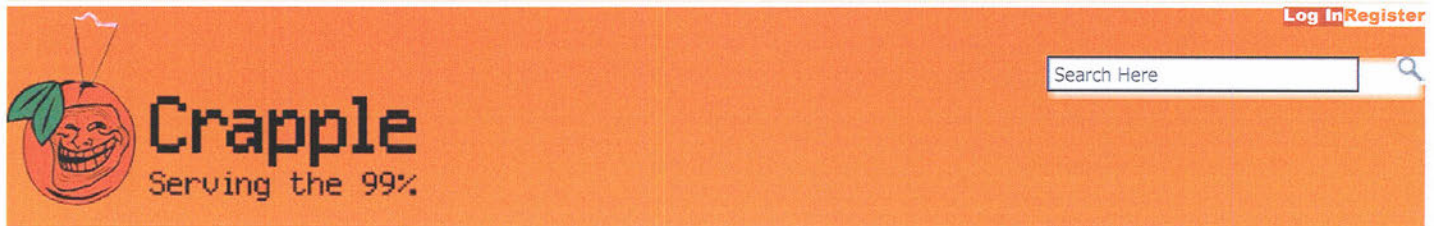
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Terms

Legal

Terms of Sale Agreement

Crapple, LLC dba Crapple ("Crapple") offers services (the "Crapple Services") through which you can sell, donate or recycle certain consumer electronic products (the "Products") after receiving a "quote" from Crapple. You must agree to abide by the following terms in order to use the Crapple Services.

BY SETTING UP AN ACCOUNT, OR BY USING CRAPPLE'S WEB SITES, YOU SIGNIFY THAT YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS.

1. About These Terms. These terms govern any offer that you make to sell, donate or recycle your Product to or through Crapple. These terms, the terms that govern your use of Crapple's web sites ("Crapple Websites"), the Crapple Services and any and all applications included therein, which terms are located at <http://www.crapple.com/legal>, the terms of Crapple's privacy disclosures located at http://www.crapple.com/privacy_policy and any supplemental terms or policies that accompany a specific transaction, feature or application collectively make up an agreement between you and Crapple (the "Agreement"). You acknowledge that this Agreement is in electronic form and has the same force and effect as an agreement in writing. In this Agreement, the term "you" or "your" means an individual or entity exercising rights under this Agreement, and the term "Crapple," "we" or "us" means Crapple and its affiliates and subsidiaries.
2. Requirements. In order to complete the sale, donation or recycling of your Product to or through Crapple or to complete any other transaction with Crapple, you must:
 - Create an account with us;
 - Provide true, up to date and accurate account information about yourself and any Product you offer to us;
 - Comply with all terms and conditions of this Agreement;
 - Comply with all applicable laws and regulations, including all import and export laws as described in Section 14 below;

Transact on behalf of yourself and not on behalf of others; and

Have the legal capacity to enter into agreements and to convey title and interest in any Product that you submit to us.

In order to receive payments for any Products we purchase from you, you must provide us with information including a valid email address at which you are able to receive email, a valid postal address at which you are able to receive mail, and your first and last name. You understand and agree that if you fail to provide us with accurate and up to date information about yourself: (a) we will not be responsible for any misapplied payments or payments sent to a wrong address, and (b) any unclaimed funds may be subject to collection by governmental authorities under applicable unclaimed funds and escheat laws. You agree that we have no obligation to you if any of your unclaimed funds are turned over to governmental authorities.

3. **Product Eligibility.** While Crapple strives to provide a quote on each Product you may wish to sell, donate or recycle, Crapple determines, in its sole discretion, which Products are eligible for purchase, donation and/or recycling by or through the Crapple Services and for which eligible Products Crapple will provide a quote. Crapple may terminate the eligibility of certain Products at any time and without advanced notice, but such termination will not affect any Products for which you have already accepted a quote.

4. **Condition Defined.** Crapple uses four (3) Product conditions to grade Products, ranking products as "new", "used" or "broken". Conditions may vary between categories and types of Products. Generally, Crapple's Product definitions are as follows:

New the item is a new and unused Product, in perfect condition with no scratches, scuffs, or signs of use.

Used: Product works and does not have missing buttons, screen damage, excessive scratches, etc.

Broken: the item has physical or functional issues such as cracked body, damaged display, missing or broken parts, dents, deep scratches, personalization(s), etc.

The above definitions are broad guidelines. More specific condition definitions specific to the category and/or type of Product are included on the Crapple Website offer screen and serve as the effective condition definition for that product. Condition definitions are subject to change at Crapple's discretion. If you are uncertain about your Product's condition, please seek guidance by contacting Crapple's customer care.

5. **Product Valuation; Product Recycling.** All quotes will be based on Crapple's own determination of the Product value in reliance on the accuracy of the information you supply us. Crapple will use its discretion to determine the Product value, weighing factors that may include the Product's model, functionality and condition. Upon receiving a quote, you have the option of accepting or rejecting that quote. Acceptance indicates you are willing to provide your Product to Crapple at the quoted price. If Crapple determines that the Product has nominal value, Crapple may provide you a quote of \$0. If you decide to continue and accept Crapple's quote of \$0, you will send to Crapple and Crapple will accept the Product for recycling. If you do not accept Crapple's quote, the specific transaction expires. If after rejecting the quote you change your mind and want to accept the quote, you will need to open another transaction with us at which point the quote may be different.
6. **Fitness for Sale.** You must own the right, title, and interest in any and all Products you seek to sell, donate or recycle to Crapple. The Products and the sale and shipment of such items to Crapple: (a) must comply with all applicable laws, statutes, ordinances, including without limitation all import and export laws as described in Section 14 below, (b) may not infringe on third party intellectual property rights (including copyrights, trademarks, patents, trade secrets or other proprietary rights), and (c) shall not be counterfeit, stolen, or fraudulent. You represent and warrant that the Products are free of any liens or encumbrances, including third-party software which may not be transferred or for which royalties are due. By using the Crapple Services, you agree to indemnify Crapple from all claims or losses sustained by Crapple as a result of any breach of this warranty.

7. **Sending Crapple Your Product.** When packaging your Product, be sure to include all materials included in your description when we calculated your quote, as well as any other materials that came with your Product (e.g., operating systems disks). This may include software, accessories, adapters, and manuals. Failure to include any items you told us about when the quote was calculated, or sending us a Product which does not match your original description, may impact the final value of your Product and may result in a recalculated classification (e.g. classified as "used" instead of "new").
8. **Removing Data From Your Product.** For Products involving devices that store files and/or personal data on hard drives, memory chips or the like, you must back up and store any data you wish to keep from your Product and remove any personal information before you send your Product to us. Crapple's standard practice is to remove all such data from your Product, however, Crapple makes no guarantee that it will do so. By sending Crapple your Product, you agree to release us from any claim as to the Product, the data stored in such Product, or any information on any media used in conjunction with the Product and which you send to Crapple, or for such data's security, integrity, confidentiality, disclosure or use. Crapple is not responsible for: (a) any loss suffered by you due to any data that is not erased from the device and transferred to a third party, or (b) any loss of data after you submitted your Product to us.
9. **Product Inspection; Quote Recalculation.** Your Product must be received by Crapple within thirty (7) days after you accept the original quote by Crapple (the "Delivery Period"). Packing and shipping recommendations provided to you by Crapple should be followed in order to avoid possible damage to or loss of the Product in transit. All Products that are received will be inspected by Crapple. Crapple has the option to accept or reject the Product, including without limitation, to reject any Product not conforming to the description you provided to us, any Product modified in such a way that it no longer conforms to the original factory specifications, any Product no longer complying with applicable laws or regulations (e.g., FCC rules, etc.) and/or any Product damaged or lost in transit. Crapple reserves the right to recalculate the original quote for the Product if: (a) the Product and/or materials are not as described, and/or (b) the Product is received by Crapple after the Delivery Period. In the event Crapple recalculates the quote, you shall have the option of accepting or rejecting the new quote. If you accept the new quote, you will be paid in normal course and in accordance with these service terms. If you reject the new quote, Crapple will return the Product to you at the address from which it was originally sent. Crapple will give you a period of five (5) days after Crapple presents you with a recalculated quote to accept or reject the new quote (the "New Quote Period"). Crapple will also remind you of the outstanding new quote one or more times during the New Quote Period. However, if the new quote is neither affirmatively accepted nor rejected by you during the New Quote Period, the new quote will be deemed to have been accepted by you and you will be paid the new quote in normal course and in accordance with these service terms. For avoidance of doubt, your acceptance of the original quote and/or any new quote is final and you may not change your mind later about accepting such quotes.
10. **Releasing Rights to Product.** Once you send Crapple your Product, Crapple cannot and does not guarantee that it will be able to honor any request for return of the Product and/or any data or information contained in such Product. Of course, if Crapple rejects the Product or you do not accept any new quote for the Product pursuant to Section 9 ("Return Circumstances"), your Product will be returned to you as set forth in Section 9.
11. **Risk-Of-Loss.** You remain responsible for the risk-of-loss for the Products until delivery of the same to Crapple. You are responsible for any damages that may occur to your Product while in transit. Crapple is responsible for risk-of-loss when it opens the packaging containing your Product and ceases in the event Crapple returns your product to you for any reason. For avoidance of doubt, in such event, risk of loss will

be transferred to you once Crapple delivers the package to the carrier for return to you and you will bear the risk of loss in transit.

12. **Passing of Title.** Title to the applicable Product passes to Crapple upon Crapple's acceptance of the Product for the original quote or the new quote, as applicable. If there is a Return Circumstance, title shall not pass and shall remain with you.

13. **Non-Transferable.** Any quote by Crapple for your Product is non-transferable and not redeemable for any other consideration other than what is quoted by Crapple.

14. **Import and Export Laws.** You agree to comply fully with all import and export laws, regulations, rules and orders of the United States, or any foreign government agency or authority, and that you will not directly or indirectly transfer your Product without proper authorization from the U.S. and/or foreign government. You bear responsibility for and assume all expenses relating to your compliance with the described laws, regulations, rules and orders, and for obtaining all necessary authorizations and clearances in order to convey your Product to Crapple, including without limitation, valuation, classification and duties applicable with the import of any goods. Please note: U.S. trade sanctions administered by the Office of Foreign Assets Control (OFAC) generally prohibit the importation into the United States (including U.S. territories), either directly or indirectly, of most goods, technology, or services (except information and informational materials) from, or which originated from Cuba, Iran, Iraq, Libya, North Korea, Serbia, or Sudan; from foreign persons designated by the Secretary of State as having promoted the proliferation of weapons of mass destruction; named Foreign Terrorist Organizations; designated terrorists and narcotics traffickers. You may not offer or provide to Crapple for recycling, donation or for sale, any Products that would violate the provisions of this Section 14.

15. **Promotions.** From time to time, and at Crapple's sole discretion, Crapple may offer promotional programs as an incentive to customers. Promotions applicable to payments are applied as an increment to the final value of a customer's Product, but they are not considered a change in that final value. Promotional programs have explicitly defined terms, including but not limited to, expiration usage per person and per transaction, and other limitations and restrictions. Unless otherwise stated, promotions must be applied by you before checkout. For the avoidance of doubt, once checkout is completed, promotions cannot be applied to the same transaction. Crapple reserves the right, in its sole discretion, to cancel or refuse promotions.

16. **Accuracy of all Information.** Crapple makes every effort to ensure the accuracy of all information you receive in relation to your Product. From time to time, however, there may be typographical errors, technical inaccuracies, pricing or other errors or omissions. As such, Crapple reserves the right, at any time prior to payment, to:

(a) Correct an error.

(b) Change the quote. In the event the Product has already been sent to Crapple, the changed quote will become a New Quote subject to the processes set forth in Section 9. Otherwise, the changed quote will be a re-issued original quote, which you may accept or reject.

(c) Void a transaction. If the Product was already sent to Crapple, Crapple will be deemed to have rejected the Product resulting in a Return Circumstance subject to Section 10.

17. **Privacy.** We view protection of users' privacy as a very important community principle. When you open an account and use Crapple's Web sites and the Crapple Services, we collect information about you. You agree that we may collect and use your information in accordance with the Crapple Privacy Policy, which you

can review by going to http://www.crapple.com/privacy_policy. If you object to your information being transferred or used in this way please do not use our services.

18. Electronic Notices and Transactions

You agree to transact with us electronically, including without limitation, agreeing to terms and conditions or offering to sell, donate, or recycle your Product by electronic means. You authorize Crapple to provide you with terms and important notices about Crapple and your transactions to an email address you provide to us or by posting notices on an applicable page (or my account area) on www.crapple.com. It is your duty to keep your email address up to date and to maintain a valid email address and to ensure that emails we send you are not filtered or stopped by spam filters or other types of email blocking functionalities. If you no longer desire to transact electronically with us, you may no longer use the Website. You can retrieve and review the Agreement by clicking on the "Legal" link at www.crapple.com.

19. Access

You are responsible for obtaining at your own expense all equipment and services needed to access and use the Crapple Websites and the Crapple Services, including all devices, Internet browsers and Internet access. If you access the Crapple Website and the Crapple Services through a mobile or wireless device, you are responsible for all fees that your carrier may charge you for data, text messaging and other wireless access or communications services.

20. No Warranties. WE PROVIDE THE CRAPPLE SERVICES AND WEBSITES "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE," WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. WE DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND THE IMPLIED CONDITIONS OF SATISFACTORY QUALITY. WE MAKE NO REPRESENTATIONS THAT YOUR TRANSACTIONS WITH CRAPPLE WILL MEET YOUR REQUIREMENTS.

21. Limited Liability. IN NO EVENT SHALL CRAPPLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS OR CONTRACTORS BE LIABLE FOR ANY COMPENSATORY, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSS OF DATA, INCOME OR PROFIT, LOSS OF OR DAMAGE TO PROPERTY, OR ANY CLAIMS OF YOU OR OTHER THIRD PARTIES WHATSOEVER WITH RESPECT TO YOUR TRANSACTIONS WITH CRAPPLE UNDER THIS AGREEMENT. Some states do not allow the exclusion or limitation of liability of consequential or incidental damages, so the above exclusions may not apply to all users; in such states liability is limited to the fullest extent permitted by law.

22. Indemnity. You agree to indemnify, defend, and hold harmless Crapple, its parent, subsidiaries, affiliates, officers, directors, employees, agents, representatives, vendors and distributors from and against any and all claims, liabilities, damages, losses, costs, expenses, or fees (including reasonable attorneys' fees) that such parties may incur as a result of or arising from your (or anyone using your account's) violation or breach of any terms under this Agreement. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with our defense of such claim.

23. Entire Agreement/No Waiver. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. The captions are used only as a matter of convenience and are not to be considered

a part of this agreement or be used in determining the intent of the parties to it. No waiver by Crapple of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Sections 6, 8, 10, 12, 14, 17, 18 and 20 through 26 shall survive termination of this Agreement.

24. Correction of Errors and Inaccuracies. The Crapple Website and any correspondence related to a transaction may contain typographical errors or other errors or inaccuracies and may not be complete or current. Crapple therefore reserves the right to correct any errors, inaccuracies or omissions and to change or update the Content at any time without prior notice. Crapple does not, however, guarantee that any errors, inaccuracies, or omissions will be corrected.

25. Modification. Crapple reserves the right to modify this Agreement at any time. If you do not agree to the changes, you may discontinue using the Crapple Websites and/or the Crapple Services before the changes take effect. Your continued use of Crapple after any such changes take effect constitutes your acceptance to such changes. Each time you submit a Product for sale, donation or recycling with Crapple, you reaffirm your acceptance of this Agreement. You are responsible for regularly reviewing periodically this Agreement, located at http://www.crapple.com/main/service_terms. The last date this Agreement was revised is set forth below. Terms and conditions modifying the Agreement are effective immediately upon posting.

26. Applicable Law and Venue. THIS AGREEMENT AND THE TERMS OF SALE AND TRANSFER OF TITLE OF YOUR PRODUCT ARE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH NEW YORK LAW AND TO THE EXTENT APPLICABLE, THE LAWS OF THE UNITED STATES. NO CONFLICT OF LAWS OR PROVISIONS OF ANY JURISDICTION WILL APPLY TO THESE TERMS AND CONDITIONS. BY CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU AGREE THAT ANY ACTION AT LAW OR INEQUITY ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS WILL BE FILED ONLY IN STATE OR FEDERAL COURT LOCATED IN NEW YORK, NEW YORK, AND YOU HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS OVER ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF THESE TERMS AND CONDITIONS. ALL DISPUTES MUST BE ADJUDICATED IN THE ENGLISH LANGUAGE.

If you have any questions, concerns, or suggestions regarding the above Agreement, please feel free to email info@crapple.com.

Last Updated: 19 December 2011

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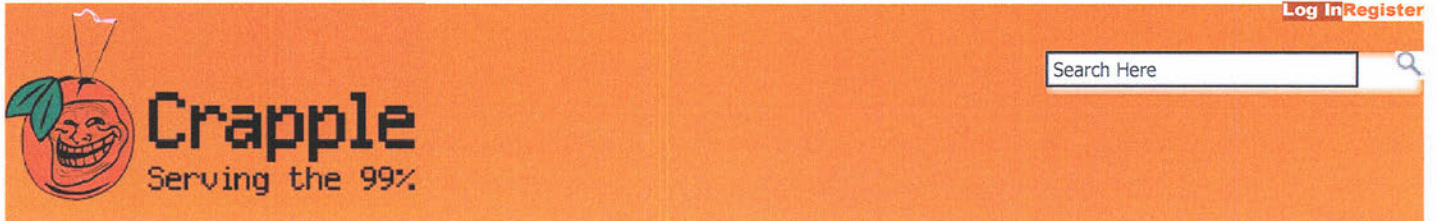
Company Info

1 (412) 315-7604

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Crapple provides the most straightforward method for getting paid for your used electronics: the price you see on our home page is the amount you will receive for your "piece of Crapple." Moreover, just let us know if your item is new, used or broken, register with us and we'll pay for your shipping. Could it get more simple?

Other websites require you to waste your time rating your merchandise's quality across multiple categories before you receive a quote, which is often \$0—they call this "recycling", we call it lying. Worse, once these sites receive your merchandise and "process" it (typically two weeks) they often give you a call to dispute your merchandise's ranking and downgrade their quote. If you choose not to accept, they simply send you back your merchandise, resulting in a loss of your time and energy. They know the 99% needs cash and need it quick, so they seek to exploit ordinary people's tough economic situation by lowballing you when you need access to cash.

Crapple understands the 99% because we are a part of it. We strive to get you paid without hassle. With Crapple, what you see is what you get: just let us know if your piece of Crapple is new, used or broken and we will send you the amount listed on our home page as of the date you shipped it. No clicking, just look at the prices on our home page.

We'll even pay for your shipping.

So what are you waiting for?

Cash in your piece of Crapple today!

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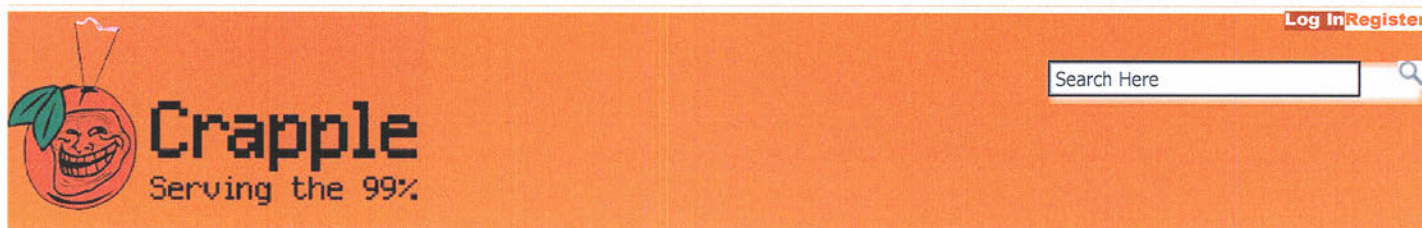
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How It Works

(1) Look at the homepage and check out our quotes on pieces of Crapple.

(2) Click on the price of the piece of Crapple you want to sell us

(3) Register with us (or sign in if you're a CrappleVet) and we'll email you a pre-paid postage and instructions as to how to send us your piece of Crapple.

That's it! Once we receive your Crapple (c'mon, we gotta make sure it's a Crapple and not a vintage 1985 Gordon Gekko brick phone) we'll send you cash via Paypal or check, whichever you prefer.

But what happens to your piece of Crapple? We fix it (if broken), and sell it to other members of the 99%, both nationally and internationally, who can't afford a new piece of Crapple. It may be just a piece of Crapple to you, but to many having a Crapple means access to the modern world and the technology necessary to make a living in a world dominated by the top 1%.

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Sell Crap

What do you call a smart phone you no longer use? A piece of Crapple. Its just sitting there, taking up space and depreciating in value. Turn that piece of Crapple into cash by sending it into us. We don't even care if its broken, we'll still get you paid for it!

Why did you buy that crappy iphone anyway? Android is open source, doesn't censor app developers and is in general a superior platform. So what are you waiting for? Ditch that piece of Crapple, get paid and upgrade yourself.

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1. crApple 534 up, 198 down

The proper term for [Apple](#).

The iMac, the Powermac, the iPod... what will crapple think of next?

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by [Assholes Inc.](#) Sep 14, 2003 [add a video](#) [add to a list](#)

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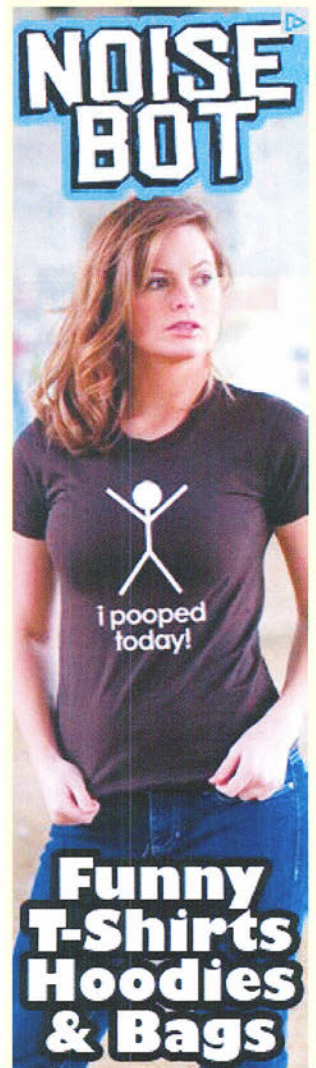
2. crapple 410 up, 176 down

Another name for Apple, who makes the worst computers ever made except for word-processing (which my old 66 MHZ can do) and graphic design. Tries to lure [newbies](#) in by making flashy colors, but then craps on their heads.

Bob: Hey, want to play Jedi Knight: Jedi Academy?

Jake: No, my mom bought me a crApple. It doesn't support any games!

Bob: That's teh sux0rz!



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by [Froggyliciousness](#) Feb 8, 2004 [add a video](#) [add to a list](#)

3. Crapple 262 up, 50 down

A nickname given to Apple, who makes the iMac (iCrap), iPod (CrapPod), AppleTV (CrappleTV), iPhone (CrapPhone), and iPad (CrapPad). Crapple is notorious for their capability to woo people with a shiny case and a nifty gimmick, but no other endearing qualities, often with a hefty price tag. Their computers are known for being very shiny (literally and figuratively), but having a major lack of software support, and being bragged about because of features any other computer in the world does just as well, if not better.

Also refers to the iCrap in some cases.

I wanted to play the new game that came out with my friend, but he bought a Crapple computer.

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[crapphone](#)

by [Gandalf20000](#) Jan 30, 2010 [add a video](#) [add to a list](#)

4. crApple 285 up, 157 down

Also known as Apple.

Apple Computers should be called crApple Computers.

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by [Jim Bob The Lumberjack](#) Feb 26, 2003 [add a video](#) [add to a list](#)

5. **crApple**    **135** up, **28** down  

A contraction of the company "Apple" Inc. and the products that it clobbers together from preexisting off-the-shelf products made by other companies, otherwise known as "Crap".

Question: Why doesn't crapple have any engineers?

Answer: Because a company of high school dropouts (like CEO Steve Jobs) are jealous of intellect. They either scare engineers away if they happen to hire one, or they chew them up and spit them out after stealing their technical knowledge and ideas and claim them as their own.

Q: Does John Geleynse STILL "work" as Director of Crapple's "World -Wide Technologies Evangelism" sit-there-and-gossip department in spite of the fact that he lied about having a college degree and has absolutely no skills?

A: Yes in spite of the fact that he has leaked employees' and customers' personal information taken from crApple's Apple Directory database to his Psychotic Church affiliates both inside and outside of crApple. And in spite of the fact he has outstayed the "Klingons". What else would you expect from a no-trick-pony icon artist that exemplifies Crapple?

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[apple store](#) [john geleynse](#)

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6. **Crapple**    **110** up, **68** down  

A crapple is the result of a sliced apple being left out for an extended period of time. The crapple is characterized (but not limited to) a dark yellowish-brown inside.

After I sliced my apple I went and did a few chores only to come back and find it had become a crapple!

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by [MickSwaggger](#) Mar 8, 2009 [add a video](#) [add to a list](#)

[Shocking Spanish Video](#)



If you do not know Spanish, you'll want to see this short video that reveals a sneaky linguistics trick!

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7. Crapple 69 up, 52 down

A term for an Apple computer by those who do not like them because they are not good.

I can't believe Judy bought a Crapple when PC's are so much better.

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[crapple](#) [apple](#) [junk](#) [lame](#) [stupid](#)

by [Trent Kuver](#) Dec 20, 2008 [add a video](#) [add to a list](#)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

-----X		
APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
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OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to 37 C.F.R. §§ 2.116 and 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Opposer Apple Inc. ("Opposer") propounds the following interrogatories to be answered by Applicant Ninja Entertainment Holdings, LLC ("Applicant") under oath within thirty (30) days of service hereof.

DEFINITIONS

- A. "Opposer" refers to Apple Inc.
- B. "Opposer's Marks" shall refer individually and collectively to Opposer's APPLE-based word marks and its Apple Logo, including but not limited to the marks underlying the applications and registrations in Paragraph 11 of Opposer's April 17, 2012 Notice of Opposition.
- C. "Opposer's Goods and Services" shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Opposer's Marks, including but not limited to the goods and services covered by the applications and registrations

in Paragraph 11 of Opposer's April 17, 2012 Notice of Opposition.

D. "Applicant" refers to Ninja Entertainment Holdings, LLC, each of its predecessors, successors, parents, divisions, affiliates, or wholly-owned or partially-owned subsidiaries, and each of their officers, directors, employees, representatives, or agents.

E. "Applicant's Mark" means the mark CRAPPLE that is the subject of Application Serial No. 85/379,097.

F. "Applicant's Goods and Services" shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Applicant's Mark.

G. "Agreements" means any license, assignment, or other agreement.

H. "Channels of Trade" means the areas of commerce and means by which goods or services are marketed or sold. Channels of Trade include, but are not limited to, the sales agents, dealerships, distributors, or other outlets through which any goods or services are or have been sold.

I. "Applicant's Website" shall refer to the website available at <http://www.crapple.com/> and any other website, including but not limited to Facebook and Twitter pages, belonging to or in the control of the Applicant which uses the Applicant's Mark.

J. "Documents" includes "things" and is defined in the broadest sense permitted by the Federal Rules of Civil Procedure, including without limitation, written documents, audio or video recordings, and computer data. "Documents" includes each writing or record not identical to the original.

K. "You" or "Your" shall refer to Applicant as defined in paragraph D, above.

L. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural in the following Interrogatories shall not be construed to limit any

Interrogatory.

M. “Person(s)” means any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization or entity.

N. “Third Party” means any Person except Opposer and Applicant.

O. “Identify” or “specify” when used in reference to a Person who is an individual, means to state his or her full name, present or last known address and phone number, and present or last known position or business affiliation.

P. “Identify” or “specify” when used in reference to a Person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or Persons in equivalent positions.

Q. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

R. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

S. The term “including” shall mean “including without limitation.”

T. The term “concerning” shall be interpreted broadly, including both explicit and implicit reference, and meaning, without limitation, relating to, regarding, referring to, constituting, defining, discussing, containing, construing, embodying, evidencing, supporting, refuting, reflecting, stating, dealing with, prepared in contemplation of, prepared in connection with, prepared as a result of, or in any way pertaining to.

INSTRUCTIONS

A. If You refuse to answer any Interrogatory in whole or in part based on a claim that any privilege applies to the information sought, state the privilege and describe the factual basis for your claim of privilege with such specificity as will permit Opposer to determine the legal sufficiency of the claim of privilege.

B. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular Interrogatory or the subject matter thereof.

C. If any of these Interrogatories cannot be answered in full, You are to answer to the fullest extent possible, specifying the reason for Your inability to answer the remainder, and stating what information, knowledge, or belief You have concerning the unanswered portion.

D. These Interrogatories shall be deemed to be continuing. You are under a duty to supplement, correct, or amend your response to any of these Interrogatories if You learn that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to You during the discovery process or in writing.

E. Unless otherwise specified in the Interrogatory, these Interrogatories shall be deemed to seek information from January 1, 2009 to the present.

INTERROGATORIES

1. Describe in detail the circumstances surrounding the selection, adoption, use, and intended use of Applicant's Mark, including but not limited to any other names or marks that were considered.

2. Describe in detail how and why Applicant's Mark was selected.
3. Describe in detail all steps taken by Applicant to determine whether Applicant's Mark was available for use and registration prior to adoption.
4. Describe in detail when, where, and how Applicant's Mark is used and/or intended to be used.
5. Identify each Person involved with or having knowledge of the selection, adoption, or first use of Applicant's Mark, and describe each such Person's knowledge.
6. Describe in detail when and how Applicant first became aware of Opposer or Opposer's APPLE Marks, including the identification of all individuals having knowledge thereof.
7. Identify each good or service for which Applicant has used or intends to use Applicant's Mark.
8. Identify the Channels of Trade through which Applicant distributes, has distributed, or intends to distribute Applicant's Goods and Services.
9. Identify Applicant's typical or target customers of Applicant's Goods and Services.
10. Identify the annual unit and dollar volume of sales, from the date of first use to the present, for Applicant's Goods and Services.
11. Identify Applicant's annual expenditures for each advertising or promotional medium used to promote Applicant's Goods and Services.
12. Identify the Person(s) most knowledgeable about the sales and marketing efforts concerning Applicant's Goods and Services, and state the duties and position of each such individual.

13. Describe in detail each instance of which Applicant has actual or hearsay knowledge, directly or indirectly, of any communication, suggestion, or inquiry regarding an association, connection, or affiliation between Applicant, Applicant's Mark, or Applicant's Goods and Services, on the one hand, and Opposer, Opposer's Marks, or Opposer's Goods and Services, on the other hand, identify each Person involved in having knowledge of each such inquiry or communication.

14. Describe in detail all instances of which Applicant has actual or hearsay knowledge of any inquiry, complaint, or other communication regarding Applicant's business or any other inquiry, complaint, or other communication by any Person regarding the qualities, advantages, or lack of quality of Applicant's Goods and Services, and identify each Person involved in or having knowledge of such inquiry, complaint, or communication.

15. Identify every Person believed by Applicant to have relevant information with respect to any issue in this lawsuit and identify the relevant information such persons are likely to possess.

This the 30th day of July, 2012.

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: 

Joseph Petersen
31 West 52nd Street, 14th Floor
New York, New York 10019
Telephone: (212) 775-8700
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Alicia Grahn Jones
Nichole Davis Chollet
1100 Peachtree Street

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Telephone: (404) 815-6500
Facsimile: (404) 815-6555

Attorneys for Opposer Apple Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. **85/379,097**

For the mark: **CRAPPLE**

Filed: July 22, 2011

Published: December 20, 2011

-----X		
APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X		

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT has been served on Ninja Entertainment Holdings, LLC via e-mail to Daniel Kelman at danielkelman@gmail.com and depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman
3629 212th Street
Bayside, New York 11361-2048

This the 30th day of July, 2012.



Nichole Davis Chollet

January 30, 2013

Daniel J. Kelman
(917) 426-5073
danielkelman@gmail.com

Via Email

Re: Apple v. Ninja: Response to Discovery Requests

Alicia and Joe,

I apologize for the delay. Included below is the information you requested in your discovery demands. The numbered questions from your interrogatories are followed by answers. As stated before, my inbox contains no relevant correspondence between Milton Barr and myself. To the extent Crapple and an association with Apple is mentioned, such is the product of an attorney-client consultation and not discoverable.

Best,

Daniel Kelman

1. Describe in detail the circumstances surrounding the selection, adoption, use, and intended use of Applicant's Mark, including but not limited to any other names or marks that were considered.

Milton Barr is in the business of buying and selling electronics. Milton hit upon an idea to purchase more electronics: create a website offering to purchase items. Milt decided to create such a website specializing in the purchase of smart phones, reasoning that the market for smartphones was rapidly growing and that people would be amenable to second hand purchase as the price of new smartphones remains comparatively high. Daniel had for quite some time been Milton's business attorney and at times partnered with him in business. Daniel agreed to help with the matter.

In order to sell the idea of purchasing second-hand smartphones to consumers, Milt and Daniel sought a name that would poke fun at the notion that the phones were no longer status symbols. To convey this message they considered numerous different adjectives and modified them with appropriate sounding "I" endings.

In selecting nouns, they sought a noun that would combine the messages of frugality, pro-environment, pro-recycling and urban. To accomplish this, a brand name was sought that would poke fun at the notion of a smart phone as a status symbol. A used phone might be considered "crud", "crap", or "junk", "garbage",

trash", "shit"—there are many such ways to convey the perceived quality of a used phone and we considered plenty.

In selecting an ending to modify our noun, we decided to place an extra "l-sound" at the end. For instance, "junk" becomes "junkle"; "shit" becomes "shittle" (my personal favorite, but too controversial for American markets) "garbage" becomes "garbagelle"; "trash" becomes "trashelle". "Crap" and "crud" both have options: they modify nicely as "Crapple", "Crapelle", "Crappelle", or "Crudelle", "Cruddle". Ultimately, "Crapple" was chosen because "Crappelle"/"Crapelle" and all "elle" words sounded and looked too French (there was a desire avoid association with high end products and keep it American). It was close between "Cruddle" and "Crapple", but "Cruddle" sounds too much like the word "cradle" and an association between used cell phones and an outdated term for something you put a baby in was decided to be not advantageous.

You may be curious why we wanted to modify the brand to be named in by adding an "l-sound" in such a way. Daniel's brother, Zachary Kelman, some years back owned a flawed cell phone that often misplaced an extra "l" at the end of a sentence. Daniel and Zachary at times joked when chatting by adding an extra "l" to the end of their spoken nouns. It became something that caught with friends as well when drinking (e.g. "drinkle").

It did dawn on us that the name was similar to "Apple", but we reasoned that there was zero chance that any consumer would think that the Crapple brand was associated with the richest corporation in the world by marker capitalization.

2. Describe in detail how and why Applicant's Mark was selected.

See answer to question 1.

3. Describe in detail all steps taken by Applicant to determine whether Applicant's Mark was available for use and registration prior to adoption.

We were well aware of both "Apple" and "Free Crapple" that were registered.

4. Describe in detail when, where, and how Applicant's Mark is used and/or intended to be used.

Please see answer to question 1.

5. Identify each Person involved with or having knowledge of the selection, adoption, or first use of Applicant's Mark, and describe each such Person's knowledge.

Milton Barr and Daniel Kelman are the exclusive authors of this project and it was not revealed publicly until after the domain "crapple.com" was purchased and significant resources expended to make such a reality. The primary reason for this

was to prevent anyone else from trying to purchase the domain and driving up the price.

6. Describe in detail when and how Applicant first became aware of Opposer or Opposer's APPLE Marks, including the identification of all individuals having knowledge thereof.

Milton Barr and Daniel Kelman are unable to remember when they first became aware of Opposer's marks. But both agree that it was likely in elementary school playing Oregon Trail in the computer lab.

7. Identify each good or service for which Applicant has used or intends to use Applicant's Mark.

We plan to use the name Crapple to operate a website that purchases used smartphones. The smartphones will be repaired/refurbished and resold. At this point we have not determined whether we will resell the phones as "Crapple" phones, but we plan on selling through store fronts and on online auction sites.

8. Identify the Channels of Trade through which Applicant distributes, has distributed, or intends to distribute Applicant's Goods and Services.

Crapple only delivers a service: Crapple will buy your phone and resell or recycle it. Everything is done online and through the mail.

9. Identify Applicant's typical or target customers of Applicant's Goods and Services.

Any person who supports the environment, wants to pay less for a smartphone and doesn't mind that it was used.

10. Identify the annual unit and dollar volume of sales, from the date of first use to the present, for Applicant's Goods and Services.

We have not purchased a single phone through www.crapple.com. We have postponed putting further funds into this idea until after this proceeding. It is well known the chilling effects these kinds of suits have on commerce.

11. Identify Applicant's annual expenditures for each advertising or promotional medium used to promote Applicant's Goods and Services.

This number is tough to quantify because it is difficult value the opportunity cost represented by the time spent working on the project.

12. Identify the Person(s) most knowledgeable about the sales and marketing efforts concerning Applicant's Goods and Services, and state the duties and position of each such individual.

Daniel Kelman and Milton Barr worked exclusively on the planning of Crapple, but along the way there were people who helped out with technical aspects, such as setting up the website.

We hired Masudur Rahman to build and design Crapple.com. We hired him on odesk.com because he was affordable and had a good rating. He was responsible for making sure the site was running properly.

13. Describe in detail each instance of which Applicant has actual or hearsay knowledge, directly or indirectly, of any communication, suggestion, or inquiry regarding an association, connection, or affiliation between Applicant, Applicant's Mark, or Applicant's Goods and Services, on the one hand, and Opposer, Opposer's Marks, or Opposer's Goods and Services, on the other hand, identify each Person involved in having knowledge of each such inquiry or communication.

There are plenty. People sometimes laugh or remark "that's funny" or something to that effect.

14. Describe in detail all instances of which Applicant has actual or hearsay knowledge of any inquiry, complaint, or other communication regarding Applicant's business or any other inquiry, complaint, or other communication by any Person regarding the qualities, advantages, or lack of quality of Applicant's Goods and Services, and identify each Person involved in or having knowledge of such inquiry, complaint, or communication.

At times there are complaints from Ninja Entertainment customers regarding an electronic device which ceases to work properly. The frequency of such an occurrence is not tracked, as it may be in the sale of new electronics. In the second-hand business we usually accommodate the customer with a discount on the new item sufficient to keep their business.

15. Identify every Person believed by Applicant to have relevant information with respect to any issue in this lawsuit and identify the relevant information such persons are likely to possess.

Milton Barr and Daniel Kelman. Everything.

Nigel Clouse. He was the original owner of Crapple.com and we purchased it from him. I do not recall the specifics of what we discussed, and I'm not sure of the value of it since it was mostly puffery surrounding a business deal.

Zachary Kelman. I am not sure the extent of what he knows, but he knows a lot about Crapple. He is a law student and my brother and has worked with me discussing legal aspects of this matter. His circa 2006 phone and/or his method of typing on it was/were responsible for trying to make popular the placing of an "l" at the end of a word to emphasize its importance in a sentence.

Masudur Rahman. He designed the Crapple website and did work to maintain it. He is also a professional cricket player in Bangladesh.

February 27, 2013

direct dial 404 815 6164
direct fax 404 541 3292
aljones@kilpatricktownsend.com

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Daniel Kelman
1934 Josephine Street
Pittsburgh, PA 15203

Re: Apple Inc. v. Ninja Entertainment Holdings, LLC., Opposition No. 91204777

Dear Daniel:

I am writing concerning Ninja Entertainment Holdings, LLC's ("Applicant") materially deficient responses to Opposer's First Set of Interrogatories to Applicant (the "Interrogatories") and Opposer's First Set of Requests for Production of Documents and Things to Applicant (the "Document Requests") served by Apple Inc. ("Apple").

I. APPLICANT'S DEFICIENT INTERROGATORY RESPONSES

Applicant did not serve any responses to Apple's Interrogatories by the October 27, 2012 deadline, which already had been extended from the original September 4, 2012 deadline. Applicant also did not request an extension of the October 27, 2012 deadline. Due to Applicant's failure to serve objections and responses by the deadline and its failure to request an extension, Applicant has waived its objections to the Interrogatories and must immediately provide Apple with complete responses.

Interrogatory No. 3

Interrogatory No. 3 calls for Applicant to "describe in detail how and why Applicant's Mark was selected." Applicant's response identifies two registered marks of which Applicant was aware prior to adoption of Applicant's Mark, but Applicant fails to describe any of the steps it took to ascertain this information, or any other steps taken by Applicant to determine whether Applicant's Mark was available for use and registration prior to adoption. Please amend Applicant's response to describe in detail all steps taken by Applicant to determine whether Applicant's Mark was available for use and registration prior to adoption.

Interrogatory No. 4

Interrogatory No. 4 calls for Applicant to “describe in detail when, where, and how Applicant’s Mark is used and/or intended to be used.” Applicant’s response merely refers to Applicant’s response to Interrogatory No. 1, but Applicant’s response to Interrogatory No. 1 does not include detailed descriptions as to when Applicant’s Mark is used and/or intended to be used, where Applicant’s mark is used and/or intended to be used, and how Applicant’s Mark is used and/or intended to be used, as requested in Interrogatory No. 4. Please provide a full and complete response to Interrogatory No. 4.

Interrogatory No. 5

Interrogatory No. 5 calls for Applicant to “identify each Person involved with or having knowledge of the selection, adoption, or first use of Applicant’s Mark, and describe each such Person’s knowledge.” As defined in the Interrogatories, “identify,” when used in reference to a Person who is an individual, means to state his or her full name, present or last known address and phone number, and present or last known position or business affiliation. Applicant’s response names Milton Barr and Daniel Kelman as Persons involved with or having knowledge of the selection, but it does not describe each Person’s knowledge of the selection, adoption, or first use of Applicant’s Mark, as asked in the Interrogatory. Please provide a full and complete response to Interrogatory No. 5.

Interrogatory No. 7

Interrogatory No. 7 calls for Applicant to “identify each good or service for which Applicant has used or intends to use Applicant’s Mark.” Applicant’s response is incomplete. For at least several months Applicant used the CRAPPLE mark in connection with a website located at crapple.com featuring a number of consumer electronic products, including Apple’s products. Please supplement Applicant’s response to identify each good or service for which Applicant has used or intends to use Applicant’s Mark.

Interrogatory No. 8

Interrogatory No. 8 calls for Applicant to “identify the Channels of Trade through which Applicant distributes, has distributed, or intends to distribute Applicant’s Goods and Services.” Applicant’s response is incomplete. As an initial matter, Applicant’s statement that “Crapple only delivers a service” is inconsistent with Applicant’s response to Interrogatory No. 7, which indicates that Applicant may use Applicant’s Mark on goods, namely phones. Please update Applicant’s response to Interrogatory No. 8 if Applicant has used or intends to use Applicant’s Mark on phones.

In addition, Applicant's response to Interrogatory No. 8 identifies purchasing, reselling, and recycling as Applicant's "service," noting that "[e]verything is done online and through the mail." Applicant's response to Interrogatory No. 7 also identifies repairs/refurbishment, but Applicant's response to Interrogatory No. 8 fails to identify the Channels of Trade for such repair/refurbishment services. Please update Applicant's response accordingly.

Finally, Applicant's statement that "[e]verything is done online and through the mail," is inconsistent with Applicant's response to Interrogatory No. 7, which includes the statement "we plan on selling through store fronts." Applicant's response to Interrogatory No. 8 fails to identify "store fronts" as a Channel of Trade through which Applicant intends to distribute Applicant's Goods and Services. Please update Applicant's response to provide further information about such "store fronts."

Applicant should update Applicant's response to identify all Channels of Trade through which Applicant distributes, has distributed, or intends to distribute Applicant's Goods and Services, as requested in the Interrogatory.

Interrogatory No. 11

Interrogatory No. 11 calls for Applicant to "Identify Applicant's annual expenditures for each advertising or promotional medium used to promote Applicant's Goods and Services." Applicant's response is incomplete. All objections, including Applicant's claim that "[t]his number is tough to quantify," have been waived due to Applicant's failure to serve timely responses or request an extension. Applicant should amend its response to provide the information requested.

Verification

Rule 33(b)(3) requires interrogatories to be answered "under oath." Applicant has failed to verify its responses. Applicant should immediately supplement its interrogatory responses with the proper verification.

II. APPLICANT'S FAILURE TO SERVE RESPONSES TO DOCUMENT REQUESTS AND TO PRODUCE RESPONSIVE DOCUMENTS

Applicant has failed to provide responses to each Document Request. Under the Federal Rules of Civil Procedure, responses to document requests served under Federal Rule 34 must include responses to each item or category in the requests. *See* Fed. R. Civ. P. 34(b)(2) (emphasis added). Specifically, Federal Rule of Civil Procedure 34 provides that "[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons." *Id.* Applicant

Mr. Daniel Kelman
February 27, 2013
Page 4

failed to comply with this rule, having provided only the general statement that “there exist no documents containing any information aside from what is displayed at www.crapple.com, of which you are already in possession,” which was sent by email after the October 27, 2012 response deadline, without any request for an extension. Applicant did not make any timely objections to Apple’s Document Requests, and therefore, such objections are waived. Pursuant to Federal Rule of Civil Procedure 34(b)(2), Applicant must respond to each of Apple’s requests by stating that responsive documents will be produced or that inspection and related activities will be permitted, or that, in the alternative, no responsive documents exist.

Moreover, Applicant has not produced a single document. Your January 30, 2013 letter states “my inbox contains no relevant correspondence between Milton Barr and myself.” However, a party has a duty to thoroughly search its records to identify all documents and information responsive to discovery requests. TBMP § 408.02. The search of one individual’s email inbox for correspondence with one other individual falls far short of Applicant’s duty to thoroughly search its records.

We find it extremely hard to believe that Applicant does not have even a single non-privileged responsive document. For example, Applicant’s Interrogatory responses identify alternative names Applicant considered, but Applicant has failed to produce any documents responsive to Request No. 2 calling for “documents concerning any alternative names....” Similarly, Applicant used its mark on the website crapple.com, but failed to produce documents responsive to Request No. 3 calling for “documents concerning any actual and/or planned use by Applicant of Applicant’s Mark.” Further, Applicant’s website is no longer active or accessible. Applicant should immediately provide written responses to the Document Requests and produce all responsive documents.

Finally, your January 30, 2013 letter includes the statement that “To the extent Crapple and an association with Apple is mentioned, such is the product of an attorney-client consultation and not discoverable.” To the extent this statement indicates that Applicant is withholding otherwise responsive information and documents based on a claim of attorney-client privilege, Applicant must (a) identify each and every Interrogatory and Document Request in response to which it is asserting a privilege claim, and (b) produce a privilege log describing the nature of the responsive documents, communications, or tangible things that Applicant has not produced or disclosed, as required by Federal Rule of Civil Procedure 26(b)(5)(A)(ii).

Please provide a substantive response to this letter no later than March 8, 2013.

Mr. Daniel Kelman
February 27, 2013
Page 5

We look forward to your response. I can be reached directly at (404) 815-6164 if you wish to discuss this matter, or you may e-mail at aljones@kilpatricktownsend.com.

Best regards,

A handwritten signature in cursive script that reads "Alicia Grahn Jones".

Alicia Grahn Jones

cc: Apple Inc.
Joseph Petersen, Esq.


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lol.....
5 1 1 · September 13, 2012 at 12:45pm


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2 1 1 · September 13, 2012 at 11:28am


Navjyot Singh
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September 13, 2012 at 11:24am


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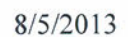

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iPhone 10
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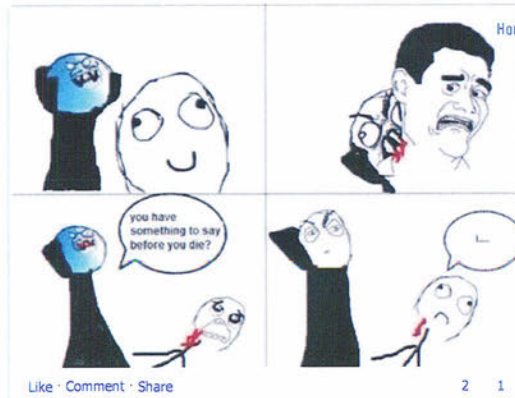

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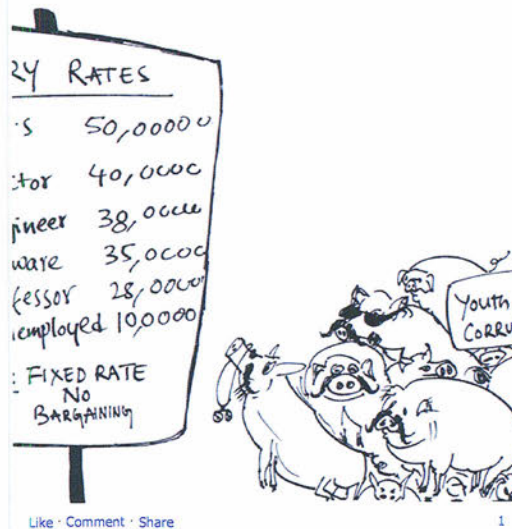


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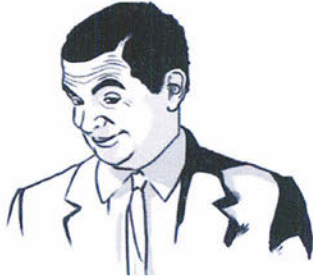
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Sorry Girls


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2>When times get tough, some people will leave you.
3>Life is full of fake people.
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- Cancer - Moody Jerk
- Leo - Egotistical Douchebag
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- Libra - Flaky Derelict
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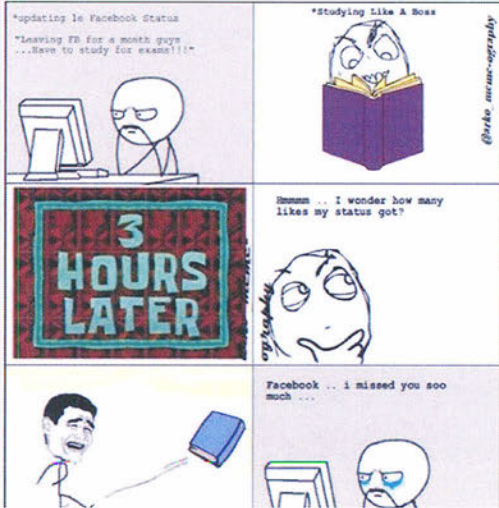
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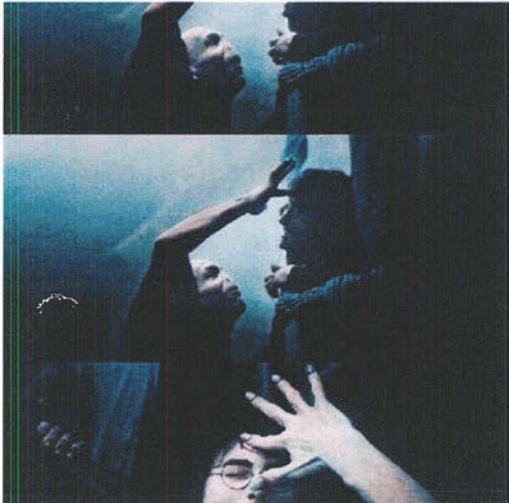
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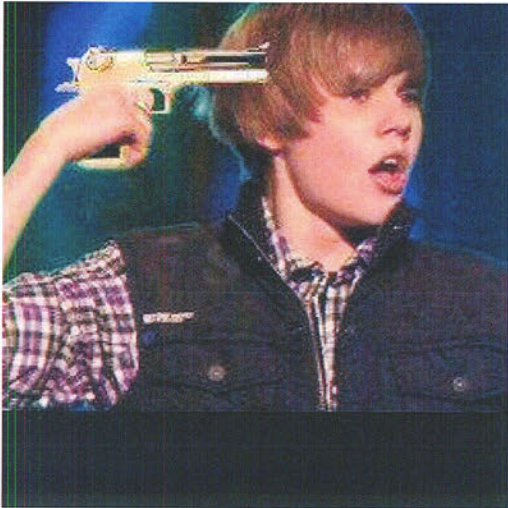
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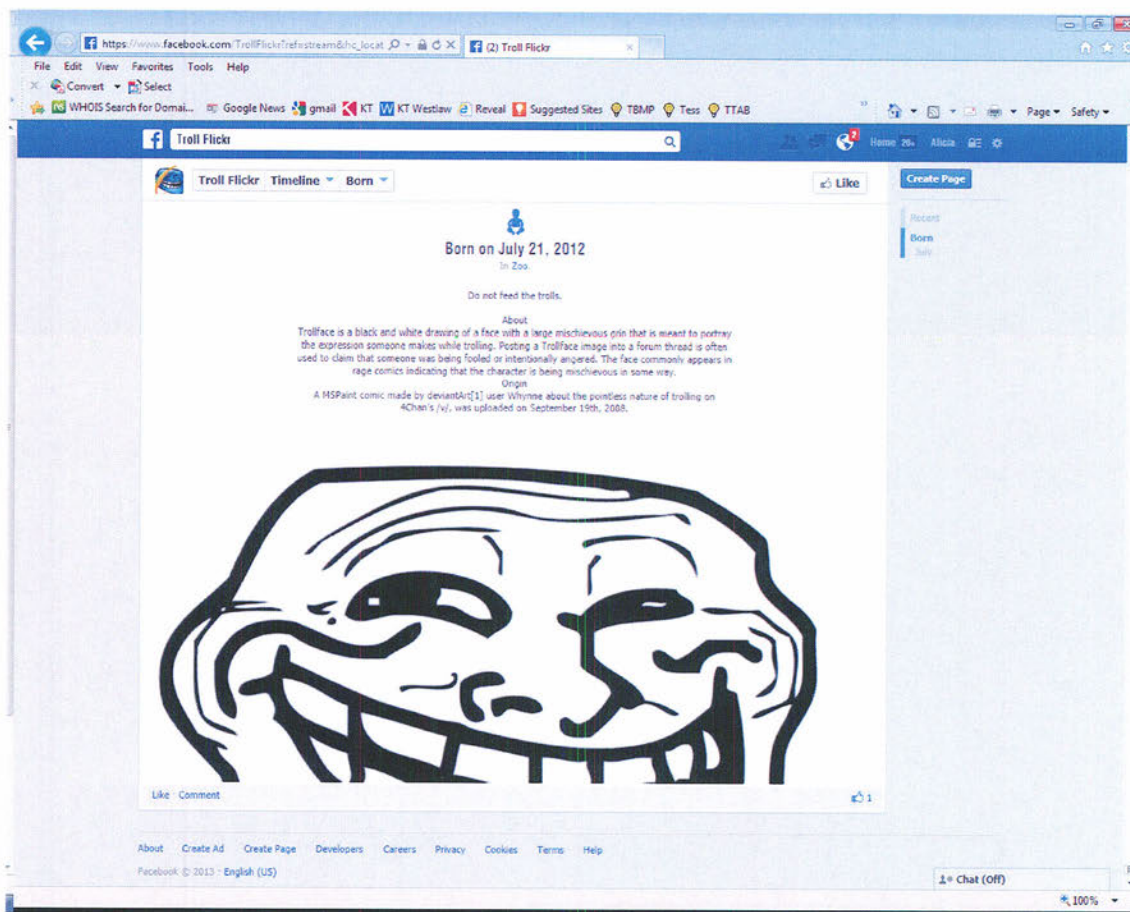
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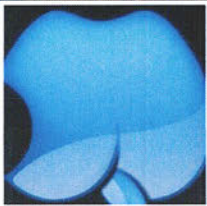


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Crapple
April 4

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09h00	: 100%	2011	: 100%
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Crapple shared Unusual Jokes's video.
March 13






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<http://i.imgur.com/mK22W.jpg>
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-  **Dave Nattriss**
I am inclined to class this as tax *evasion*, not just tax...
3 13 · July 2 at 8:59am
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May 20 at 8:31pm

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Chat (Off)

Ninja 30(b)(6) Dep. – Exh. 26

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Crapple



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Crapple shared a link.
February 22

Cures "Frequent visits to the Apple Store". Must be good :D

Unpretentiousil Medicine Commercial To Heal Hipster

Oh and BTW the moral of the video is "Hipsters are sheep, just slaves to fashion and brands and wouldn't know what acting differently was if it punched them in the face."

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Crapple
January 22

Straight to the point.



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Crapple
January 16

Not limited to Apple anyway.

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iPod's Dirty Secret High Resolution

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Crapple changed their cover photo.
February 28

Buy an iPhone 5, they said



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Crapple shared a link.
January 30

Why Do Americans Hate Android And Love Apple?
readwrite.com


Worldwide, Android rules. But here in the U.S., Android gets derided as a "ghetto" product. And you know what that means, nudge nudge wink

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Crapple
January 17

YouTube

iPads survive 1300 foot drops in G-Form cases during skydiving



104 / 109

Bech, please. A nokia doesn't even need a case.

The last time someone dropped a Nokia from 1300 foot all the dinosaurs died

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Crapple
January 10

My iPod Touch fell from 10cm above the ground. On the backside... Thanks Apple

Chat (Off)

Zac 56 minutes ago

pope tweeted from an iOS device, your move android.

Comment

andrew and 2 others like this.

Graeme God chose wisely

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Crapple shared a link.
January 4

Android > iOS
Findings from an Apple pro-user.



An iPhone lovers confession: I switched to the Nexus 4. Completely.
www.24100.net

If you'd come by my house, you'd find four of the latest Apple TVs, two iMacs, the latest MacBook Air, a MacBook Pro, more than five AirPort Express stations and Apple's

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Crapple shared Datenrettung Austria's photo.
November 30, 2012

Mac users need some anger management classes :)

Heute kam ein MAC zur Datenrettung. Fehlerbeschreibung des Kunden: Wutanfall! Rettet bitte meine Daten...



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Crapple
October 15, 2012

2 years ago was the last time I saw an other type of phone with a broken screen.
Since then, I saw only broken iPhone screens around me...

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Crapple shared a link.
January 2

This covers a fair chunk of the hate we have:



Dear Apple: Deleting your users' apps without notification is rude and arrogant
venturebeat.com

Editor's Pick Yesterday I pulled up the Youtube app on my recently updated

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Crapple
October 22, 2012

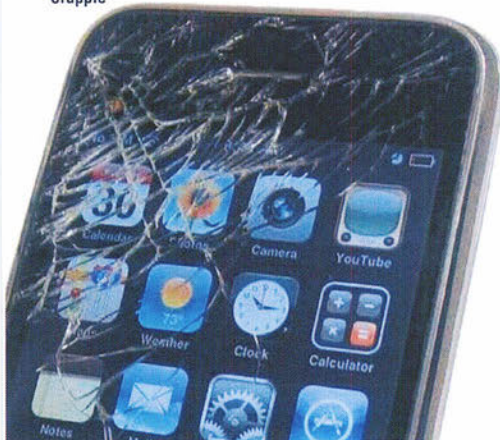


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Crapple shared a link.
August 23, 2011

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Crapple



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Crapple shared a link.
July 4, 2011
<http://blogs.forbes.com/ericsavitz/2011/06/20/whats-wrong-with-apple/>

What's Wrong With Apple?
blogs.forbes.com

What the heck is going on with Apple shares? The stock is getting whacked, without obvious provocation. Apple is down \$7.50, or 2.3%, to \$312.76 this morning; for the month of June to

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Crapple shared a link.
April 12, 2011

Communication can be so simple.

Blackberry shoots Apple

Never aired TV commercial.

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April 21, 2010

Apple Wants To Own You


Welcome to our velvet prison, say the boys and girls from Apple. - By Jack Shafer
bit.ly

Steve Jobs has gone from producing a computer—the original Macintosh—that

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http://www.appleinsider.com/articles/11/08/18/apple_accused_of_selling_refurbished_iphones_as_new_in_china.html

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August 16, 2011
<http://timesofindia.indiatimes.com/tech/news/hardware/Apple-misled-court-in-Samsung-case-Report/articleshow/9622438.cms>

Apple accused of faking evidence in Samsung case - The Times of India
timesofindia.indiatimes.com

An investigation by Webwereld.nl, a Dutch IDG publication, has accused Apple and its lawyers, perhaps

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Crapple shared a link.
July 4, 2011
<http://www.pcmag.com/article2/0,2817,2388025,00.asp>

Anonymous Hacks Apple Server | News & Opinion | PCMag.com
www.pcmag.com

The hacktivist group compromises 27 accounts on an Apple survey server, a minor attack compared to Lulzsec's former iCloud hacking claims.

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Crapple shared a link.
June 20, 2010

Check out this promo ;)


Banned iPhone 4 Promo

Apple iPhone 4 promo spoof. check out the iPad spoof <http://tinyurl.com/yif8y2r>

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3

Crapple
October 31, 2009

all that crap (10 photos)

Chat (Off)

Crapple

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October 31, 2009

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Chat (Off)



FRIDAY, 26 NOVEMBER 2010

Service Part packaging

Looks like the Apple isn't getting any greener, so says [Greenpeace](#) anyway, and so says me, 'cos I see it on a daily fucking basis. Apple are always gloating about how much smaller the packaging is for their products, but for service parts it's a whole different story. Take for example an Airport card, Apple insist on using a huge box where a matchbox would suffice.



Apple's eco-friendly service part boxes.

So next time you want to get your MacBook fixed and are told the part isn't in stock, consider the size of the truck that can only fit so many Airport cards on it at once.

Posted by Crapple Store at 01:00

WEDNESDAY, 24 NOVEMBER 2010

Training and Morale

Working at Apple you will very quickly notice the lack of training and morale. I have never worked in a place before where almost all the employees want to leave, and from the emails and feedback this blog receives I guess it's pretty common. Who knows, maybe some of the anonymous emails came from some of this lot, although from the Kool-Aid that's being drunk in the [unedited version](#), I guess not.

ABOUT ME



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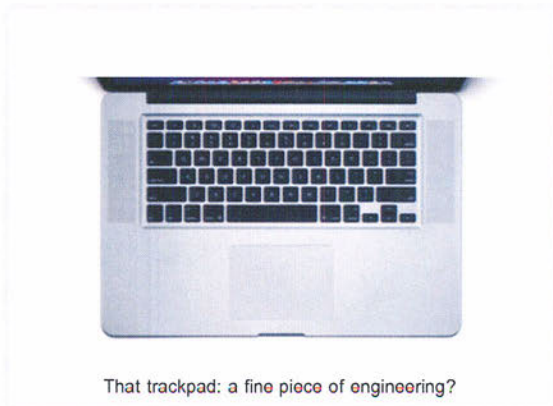
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Posted by Crapple Store at 04:23

MONDAY, 22 NOVEMBER 2010

The new trackpad

What's next on the list of things I fucking hate I hear you ask? This beauty:



That trackpad: a fine piece of engineering?

Just a quick note to anyone buying any new MacBook, I would strongly recommend a cheap USB mouse to go along with your computer. Either that or learn how to use VoiceOver. No particular reason obviously...

Posted by Crapple Store at 03:08

FRIDAY, 19 NOVEMBER 2010

EPP



It's bullshit that the friends and family discount can be so close to that of a student. And if they want AppleCare then EPP2 offers pretty much nothing

at all. That's why I used to get EVERYTHING on EPP1. My mum used to work with this guy who got his cat off his former roommate's cousin, well this cousin's ex-girlfriend had a brother that needed a MacBook for his mate, and *that* dude got EPP1.

But now they've changed it so you have to sign in with your AppleConnect. Bum.

Posted by Crapple Store at 03:48

WEDNESDAY, 17 NOVEMBER 2010

BOH

"Three cheers for the BOH team! They've just had their audit and they're 99.05% good at counting boxes!!"

Amazing, a result I could have delivered at 11 years old. They should get off their arses and spend 20 mins on the shop floor and actually do some fucking work. In my store, the BOH team are particularly good at watching YouTube, leaving shit on the floor and not answering the phone.

For any external people reading this wanting a job as an 'Inventory Specialist' at Apple, you may have already seen the video on the [recruitment part of the Apple site](#). For those that haven't seen it, it's a bit long so I've just cut the most important bits out and presented it here.

N.B. Worth noting that the '99.05%' figure is not an actual statistic, I made that up and it's *not* true.

Posted by Crapple Store at 03:58

MONDAY, 15 NOVEMBER 2010

Credo Card



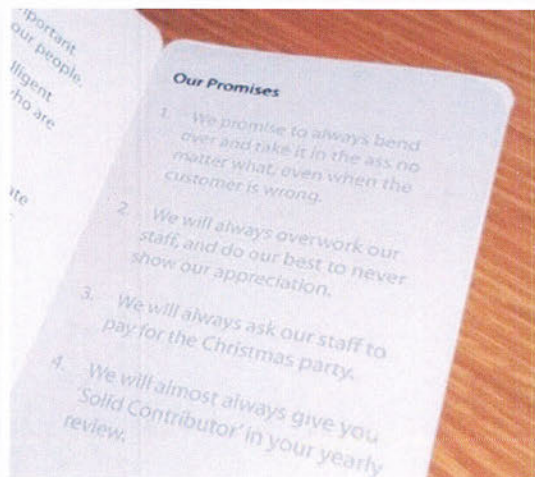


Every employee gets a little booklet of lies, the biggest one being:

"At Apple, our most important resource, our soul, is our people."

Is that why managers will always believe the customer first? Or why anyone instore who can swap an iPhone is worked to the fucking bone? Or why all the staff feel so unappreciated?

I found this the other day:



Is this a page from the new credo card?

Posted by Crapple Store at 05:02

FRIDAY, 12 NOVEMBER 2010

Store Meetings





A typical store meeting for employees.

"Hey team, there's a store meeting this Sunday. Everyone should attend unless you have pre-booked holiday"

No worries, I'll just come in at 8 a.m on my day off, on the day of rest to be brainwashed, yeah that'll happen.

Here's a list of things you're guaranteed to see at a store meeting:

1. Managers justifying bullshit, 'thanking' you for working so hard for their bonuses without mentioning bonuses.
2. Ron Johnson's face (on video of course).
3. Apple employees sighing and muttering shit under their breath.
4. Managers not working that day showing off their expensive day-off clothes.
5. Lots of figures.
6. At least one technical hiccup (usually involving volume, Genius Bar screens or Keynote issues).
7. Low morale (standard).
8. Only half the Genius Team.

Enjoy.

Posted by Crapple Store at [08:36](#)

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WEDNESDAY, 10 NOVEMBER 2010

Staff discount on APP

Working for Apple, you will quickly realise that the products are in fact, not akin to the second coming of Jesus Christ but will break like any other mass produced cheap Chinese shit. So to keep the staff happy, you'd expect the discount to extend our warranties would be pretty reasonable right? Maybe even free? Wrong.

When you can easily pick up AppleCare on eBay for less than half price, it probably means some rich corporate prick at Apple, who has never considered APP because they get a new machine for free, is taking the piss.



Posted by Crapple Store at 07:20

MONDAY, 8 NOVEMBER 2010

Behaviour Scan

Behaviour Scan has always been a chore to use, but now it's ridiculous. You have to type a specific link on the customer's phone, then put their serial into your iPod touch, get a ticket, wait for the ticket, then type the ticket into the iPhone, then fucking typ.... ..

Just put 'will not power on'.

ABOUT ME



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A typical iPhone suffering from 'will not power on' issues.

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Posted by Crapple Store at 06:01

FRIDAY, 5 NOVEMBER 2010

Active Queue Management

So the Genius and FRS team don't call people's names out anymore? And you don't need to book in advance? Who is supposed to open the sessions? What the fuck is going on??



A queue of standby appointments, yesterday.

As if swapping 50 phones a day doesn't make you want to commit suicide already, Apple have found a way for you to swap even more, called Active Queue Management. It involves 2 whole people wandering around with iPads not swapping phones but forming a queue of happy customers. For the ~~Phone-Swapping~~ Family Room Team it basically means the second you give someone another ~~refurbished~~ "remanufactured" handset, you are handed another broken iPhone to start the process over again, meaning you're swapping upwards of 70 phones a day.

This is definitely not what I was supposed to do with my life.

Posted by Crapple Store at 06:24

WEDNESDAY, 3 NOVEMBER 2010

Ron Johnson

This is the guy responsible for all the stuff that goes on in Apple Retail. If you're doing repairs until midnight, I'm pretty sure it's cos this guy hates your wife and your social life. It's people like this that think they're the ones who have made Apple so much money, they honestly believe they know what goes on in stores. And I'm sick of his fucking voice, and face, in all those shit videos you have to watch during the ~~brainwashing sessions~~ store meetings.

Here's an image of the life-enricher in a retail store during the iPad launch. The image may or may not have been tampered with.



Ron Johnson, Senior Vice President of Retail Operations

Posted by Crapple Store at 05:22

MONDAY, 1 NOVEMBER 2010

Justifying bullshit

Before you stop caring, you will find yourself justifying bullshit things about the products, like why an iPod doesn't come with a fucking charger. Who remembers selling these bastard things for the 1st iPhone?



An additional adapter was needed to use your own headphones

Probably backed up with;

"Yeah, it's like narrower here so like rain won't get in and stuff"

But once you get your first Solid after a year of caring, you'll just start admitting that it is in fact bullshit.

Posted by Crapple Store at 05:24

FRIDAY, 29 OCTOBER 2010

The ignorance of 'the'



Correct grammar is also not available.

Every Mac user, including the ones that make the signs for the retail stores, have an app installed on their computer called 'Dictionary', but Apple act as if the word 'the' is forbidden. If they did a spotlight search for 'the', they'd notice a definition comes up, and should pay particular attention to the 3rd point down. I can only imagine on corporate computers it comes up with something like this:

3 used to make a generalized reference to something rather than identifying a particular instance : *he taught himself to play violin.*

Posted by Crapple Store at 04:26

WEDNESDAY, 27 OCTOBER 2010

Daily Download

Fucking hell, probably in the top 10 worst things about working here. Fucking cheering on a daily basis about sales figures, we get it, sell more onetooone.

"Yesterday we took *THIS* much money, but today we want to take more". When managers mention YTD %age, does anyone else not get pissed off that their paycheck is nowhere near that figure?

Just try to stay out of the line of sight and drift off thinking of how shit your life has become since you heard this shit 5 times a week.

For those who miss it, here is your bog-standard cheers and whoops after a

daily brainwash, which in our store has been affectionately renamed 'Daily Brownload' to coincide with the torrent of shit you are about to endure.

Posted by Crapple Store at [04:10](#)

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MONDAY, 25 OCTOBER 2010

EasyPay Touch

Are you ready? Seriously, here comes Apple's greatest show of ignorance to the UK Retail market ever: EasyPay Touch. They said it was gonna be amazing- no more Fujitsu B for Bullshit-Pads with shite batteries and terrible screens, you get to use an iPod! Sounds great right?

But guess what? There's no chip-and-pin card reader on it.



EasyPay Touch: Are you taking the fucking piss?

For fuck's sake, let me just drag you over here to put your card in the slot, then I'll drag you over here to get a bag for you and then finally over here to get your receipt.

Posted by Crapple Store at 03:38

FRIDAY, 22 OCTOBER 2010

Diversity

Have you ever noticed the promo shots of Apple retail, and now ethnically diverse it is? From the images they fabricate you'd think it would be a place where no matter what race you are, you can all laugh about Micro-DVI together.

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Diversity

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Management speak

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Store designs

Apple Store Marriages

Too much lighting

The new AppleTV

The many outfits of Steve Jobs

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FOLLOWERS

I once got an email back from an appointment at the Genius Bar, and the image did not reflect the store in question- although they did have a girl there (probably to build up the stats).

Seriously, how long before *this* happens?



(Only 4 of these are real).

Posted by Crapple Store at 04:48

WEDNESDAY, 20 OCTOBER 2010

Employees that toy with ways to wear the t-shirts

You will become sick of wearing the same t-shirt everyday, but no doubt be too tired and depressed to change out of it when you get home. Taking on board the old 'think different' slogan, there will be some employees that will try to stir up the way in which they wear their t-shirt.

My least favourite is this: the shirt under the t-shirt. Must be fucking uncomfortable.



The kernal panic of retail attire

Posted by Crapple Store at 05:58

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MONDAY, 18 OCTOBER 2010

Management speak

I fucking hate management speak, more so than Mr. Brent in fact. Overcoming objections, creating promoters, getting to yes, enriching lives, all that shit.

Someone at Apple has definitely spent some time on <http://whatthefuckismysocialmediastrategy.com/>

Posted by Crapple Store at 13:58

FRIDAY, 15 OCTOBER 2010

The fake love of music

As I'm sure we're all aware, Apple LOVE music.



They love the Beatles so much they even stole the name of their record company. Sometimes they have to get John Mayer to sing live for them to remind themselves of 'why we do what we do', but did you know the artists actually get paid less than from sales on iTunes than physical CDs? Where does the money that's been saved from packaging and shipping actually go? Hmmmm, I wonder.

Source

Posted by Crapple Store at 06:24

WEDNESDAY, 13 OCTOBER 2010

Store designs

It took me a while to fucking hate this, but the ostentatiousness of some of the store fronts pisses me off.



Putting this on the corner of Central Park opposite the Plaza is the retail equivalent of walking down 5th Avenue in a suit made of negotiable bearer bonds with your cock out, talking loudly on an iPhone.

Posted by Crapple Store at 05:43

TUESDAY, 12 OCTOBER 2010

Apple Store Marriages

He couldn't get it in white, as this model only comes in black.



What??? Jokes.

Oh god I hope this doesn't offend anyone.

Posted by Crapple Store at 07:53

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FRIDAY, 8 OCTOBER 2010

Too much lighting

Is it necessary to have so much fucking lighting instore? I'd say somewhere between UFO-like glare of Apple and those (should be braille trained) idiots at Hollister is probably about right. It's even more noticeable now that everything has a glass screen, as demonstrated by this Specialist who is trying to show a customer how to hold an iPad so you can actually see the screen.



Posted by Crapple Store at 04:20

WEDNESDAY, 6 OCTOBER 2010

The new AppleTV

Apple again arrive behind the curve with this crock of shit. I'm sick of uneducated people buying any shit with an Apple logo on it, and AppleTV is the best example of a piece of shit that we sell.

Here's a poster I made for overcoming possible customer objections. I might

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► September (14)

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FOLLOWERS

Here's a poster I made for overcoming possible customer objections, I might see if they'll let me put it up in the staff area:


The new
AppleTV



Overcoming objections, and answers to frequently asked questions about the new AppleTV

It's 2010, does it deliver 1080p video?	No
Can it play ANY other video codec other than iTunes based media?	No
So if it plays in iTunes, it'll def play on the AppleTV?	No
Do all HD movies I rent from Apple come with 5.1 audio?	No
Can it play FLAC audio files?	No
I don't want to leave my computer on in another room just to play music, does it offer any type of storage for music?	No
All my media is backed up onto a Time Capsule which is always on, can I stream from that?	No
I see it has a USB port, will there be an adapter so me and my friends can plug our iPods in and listen to music off them?	No
Will it play my iMovie projects before I spend days exporting them?	No
What about iDVD projects I've finished?	No
What about 5.1 music, possibly ripped from DVD-As or SACD?	No
Is it cheaper to rent a 720p movie on AppleTV than it is to rent 2 1080p Blu-Ray movies from LoveFilm?	No
For £99, does it come with an HDMI cable?	No
Last time I checked, £1 ≠ \$1. Am I wrong?	No

The all-new **Apple tv**



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Posted by Crapple Store at 13:46

MONDAY, 4 OCTOBER 2010

The many outfits of Steve Jobs

Here is a snapshot of what big ol' SJ has been wearing over the last 6 years during WWDC:





Seriously though, all the money in the world and only one fucking outfit?
Gimme a fucking break.

Posted by Crapple Store at 08:12

FRIDAY, 1 OCTOBER 2010

Outdoor queueing

It's common knowledge nowadays: if you want something soon, just pre-order it online. Seriously, it's the same price, and it gets delivered to your house, what could be better? You also get the benefit of not risking getting high-fived in the face.



People camp on the street like the fucking homeless, and they must have to take time of work to do so too. If I'm ever the boss of anywhere and someone asked me for time off to go and queue outside for days for a new phone, I'd tell 'em to get a fucking life. Who the fuck would do such a thing? Just for a new phone?? Seriously 'WTF?'.





P.S. That iBook's gonna need a new logic board if she doesn't move that fucking broly.

Posted by Crapple Store at 05:09

WEDNESDAY, 29 SEPTEMBER 2010

The Specialists

Although probably 10% of the Specialists nowadays could differentiate mini-VGA from mini-DVI, most of them will be like this guy:



Tormented Logic, definitely owns an iPhone, good at talking shit.

Word.

Posted by Crapple Store at 04:13

MONDAY, 27 SEPTEMBER 2010

The Genius Team

Some members of the holy Genius team will no doubt have a 'geekier than thou' attitude, and to be honest, it's fucking annoying, especially when delivered to other members of the team who are definitely below them.





Well done mate, you wear a different t-shirt to me, one that actually confirms that you are indeed by default, one of the biggest losers in here. You're so important if I didn't work here I'd have to book an appointment to speak to you.

Congratulations, you must be proud.

Posted by Crapple Store at [15:23](#)

FRIDAY, 24 SEPTEMBER 2010

The rules

I love the rules that aren't really rules, it's a joke.

We can't return opened box software.

We can't return headphones.

Customer needs to sign paperwork.

You must sign out repairs.

All mobile device appointments must be done on an iPad or iPod touch.

MobileMe is only discounted when purchased with something else.

Onetoone is only available to customers who purchases a Mac from here.

You did not purchase the product from here, so we cannot give you your money back.

You need to book in for an appointment.

Store closes at 9.

What's the fucking point? I've seen all of these overruled at 'Manager's discretion'. It's worse when you've spent ages trying to force one of these points onto a customer, then the manager comes in and cuts you down. It's fucking erodes the base upon which all you've learnt rests.

Posted by Crapple Store at [03:18](#)

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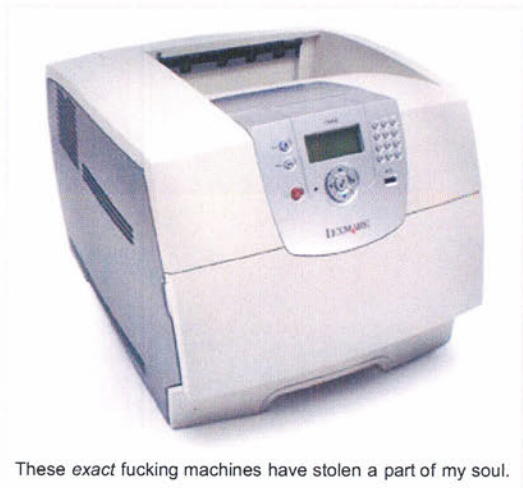
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WEDNESDAY, 22 SEPTEMBER 2010

Printers

Man I fucking hate the printers in store. Everyday I get to work it's a battle to get anything to print. Dymo, thermal, full-fat printer, all the same. When I press print and then hear those fucking beeps, agggghghhhh **FML**.



These *exact* fucking machines have stolen a part of my soul.

Sometimes I think, "come on, I can fix this, it's what I do", but then comes the reality:

"I don't give a shit".

Just leave it and get some manager to spend 40 mins on the phone to IS&T, fuck it.

Posted by Crapple Store at **04:36**

MONDAY, 20 SEPTEMBER 2010

Yearly reward

"The reason we're at about xxx% on YTD, is you guys. Thanks for working so hard **all** year. To say thanks, we'd like to treat you to something, to show our appreciation"

ABOUT ME



Crapple Store

It began with a list of reasons why working for Apple Retail is fucking shit, and just

spiralled out of control. I couldn't keep it inside anymore, and so have decided to share the hate with the rest of the world.

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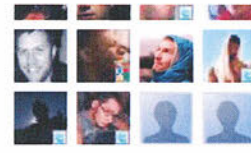
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Apple Retail staff, running to pick up their free Boots Meal Deal



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What recession eh? So generous.

Cheers for the 'free' food, I've only been working 15 hours straight during iPad launch.

Posted by Crapple Store at 07:53

FRIDAY, 17 SEPTEMBER 2010

Hipster customers

Is there an app to tell this guy to get a fucking life and point out he's only a face-mask away from being mistaken for the galaxy's trendiest Stormtrooper?



Posted by Crapple Store at 11:21

WEDNESDAY, 15 SEPTEMBER 2010

EasyPay

It's not easy, it's fucking shit.



Screen calibration is shit, battery is shit, and just when you go to use it it needs to be reset because of low memory, while you have to make more bullshit small talk with some stupid idiots who have just spent half an hour bending your ear picking a fucking iPod case. Worst is when the battery dies halfway through a transaction, and you then have to majorly fuck about to see if it's actually billed the customer.

I've been handed similar things as a customer in probably every restaurant I've eaten in within the last 5 years, without any problem, and they usually have a printer built in. But we couldn't do that, we have to try and turn everybody into digital fucking Human 2.0s by emailing their receipt, despite the fact that they may actually be classed as a fossil.

Posted by Crapple Store at 05:58

MONDAY, 13 SEPTEMBER 2010

Apple Store Leader Programme



If you have graduated, consider a career at the Apple Retail Store.

Seriously, that's from the Apple site!! Why are they trying to pretend to graduates this is a career? IT'S A FUCKING SHOP. You will almost certainly work in a shop for your entire time at Apple, and you will have

virtually zero opportunities to advance with any type of meaningful career.

Please, any graduates reading this, do not sign up.

Posted by Crapple Store at 13:34

FRIDAY, 10 SEPTEMBER 2010

Hipster employees

There was a time when Apple was about thinking differently, and there was a certain niche about owning a Mac. Now every fucker has got one. Apple seem to have taken a leaf out of the paedophile handbook- instead of offering sweets to children, they offer free iPods and printers to lure them in. Then, when they least expect it they'll fuck them up the arse by making the MacBooks out of cheap fucking plastic that cracks so it needs another pointless repair. And if you're a fucking hipster with a mac, then put on your big glasses and don your wooly hat cos you're hired bro!!

I strongly assume this belongs to a staff member:



Posted by Crapple Store at 08:44

WEDNESDAY, 8 SEPTEMBER 2010

'Known issues'

Well done, you Googled it and found 3 other people in the world noticed the same thing. Don't try and outsmart the Genius team, they don't appreciate it.





Posted by Crapple Store at 06:13

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TUESDAY, 7 SEPTEMBER 2010

No staff discount on iPads

So I'm supposed to learn how to use it during 'training time', sell it all day long, then pay full price for one?

How smart do they think this typical scene looks?



Posted by Crapple Store at 06:51

Yearly Reiew

Everybody has a year of working hard, doing all the extra work offered to them, spending their own time working on things, staying late etc, only to be slapped in the face and told that they're just like everybody else in the company and that it's your job to do that.

In future, just gimme a solid and fuck off.

Posted by Crapple Store at 06:22

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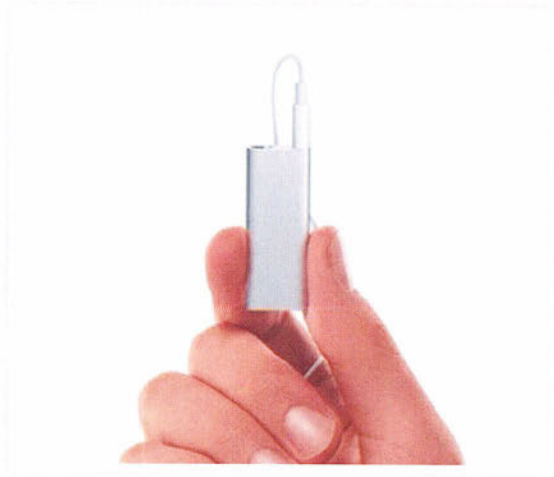
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SUNDAY, 5 SEPTEMBER 2010

iPod shuffle

What a load of shit. Stupidest iPod ever. That should be the slogan.



Check out the [instructions](#) for the button.

Go to the previous track (or audiobook chapter)

Triple-click the Center button within 6 seconds of the track starting. To restart the current track, triple-click after 6 seconds.

Good work, really simplified the shuffle there.

Posted by Crapple Store at 00:24

FRIDAY, 3 SEPTEMBER 2010

Funnest

It's not a real word.



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iPod touch. The funnest iPod ever.

Millions of songs. Thousands of movies. Hundreds of games.

Which illiterate, ignorant American cunt wrote that?

[Dictionary.com](#), [Cambridge](#)

(Note the full stops again)

Posted by Crapple Store at [05:55](#)

TUESDAY, 31 AUGUST 2010

Full stops

I hate that every fucking slogan has a full stop in it, like they're trying to slow it down for you because you're so amazed at everything about the product you need to take some time to catch your breath.

Here's just a selection of the current line-up:

Work hard. Play hard.

iPhone 4
This changes everything. Again.

No detail overlooked. Or underthought.
Beautiful on the surface. More powerful below it.

Game on.
And on. And on.
iPod touch. Starting at \$199.

The fastest, most powerful
MacBook Pro ever. Times three.

Thin as always. Faster than ever

Either that or the comma key doesn't work. Probably needs a topcase. Book it in.

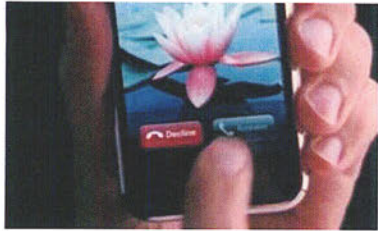
Posted by Crapple Store at [10:37](#)

SUNDAY, 29 AUGUST 2010

John Appleseed

Who the fuck is this guy??





Decline!! DECLINE!!

And just to be super trendy, he's also got a Chinese wife:



I swear, not even I could have made that up

Posted by Crapple Store at 18:20

WEDNESDAY, 25 AUGUST 2010

New Store Openings (or 'NSO' for those in the know)

The first thing you'll fucking hate is the opening a new store. You'd think from the cheering something major is happening, but really it just another fucking shop surrounded by other shit shops. Everyone whoops, cheers and delivers high fives all round, especially to the biggest loser of them all- the virgin at the front of the queue. Even old people get the cool young hip treatment, look at this poor old man:



"Congratulations of leaving your piss sack at home and raise that liver spotted hand and gimme some skin bro!!"

It's all worth it for that free t-shirt tho, comes in handy when cleaning the wheels on your car.

Posted by Crapple Store at [13:54](#)

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WEDNESDAY, 25 AUGUST 2010

First, welcome

Chances are you've found your way here because you've googled something like 'working in Apple retail is fucking shit'. I hope so anyway. For those about to leave their soul at home and start work in an Apple Store, read this blog before seriously considering staying more than a month. For those already trapped, enjoy.

Posted by Crapple Store at 13:43

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